

Exhibit 37

Deposition of Robert Topel (December 6,
2017) (excerpted)

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

CUNG LE; NATHAN QUARRY, JON)	
FITCH, on behalf of)	
themselves and all others)	
similarly situated,)	
)	
Plaintiffs,)	
)	
vs.)	Case No.
)	2:15-cv-01045-RFB-(PAL)
)	
ZUFFA, LLC, d/b/a Ultimate)	
Fighting Championship and)	
UFC,)	
)	
Defendant.)	
_____)	

HIGHLY CONFIDENTIAL

CONTINUED VIDEOTAPED DEPOSITION OF

ROBERT TOPEL, VOL. II

Washington, D.C.

December 6, 2017

8:39 a.m.

REPORTED BY:
Tina Alfaro, RPR, CRR, RMR
Job No. 52570

<p style="text-align: right;">292</p> <p>1 So they'd have to be -- there would be competition 2 for this exclusive upfront, but information is not 3 fully played out yet on who's who. So I doubt 4 that -- I doubt that fighters would want to sign 5 that contract. So you -- you have a hypothetical 6 contract there. Zuffa's not going to get any 7 fighters with that contract.</p> <p>8 Q. So in your view it's -- is it your view -- 9 I'm just trying to understand. Is your view that 10 it's anticompetitive because no one could sign it 11 or that it's anticompetitive for other reasons or 12 both?</p> <p>13 A. Well, you asked me --</p> <p>14 MR. WIDNELL: Objection, form.</p> <p>15 BY THE WITNESS:</p> <p>16 A. Technically speaking, you asked me if it 17 was procompetitive, so like it was efficient, 18 right?</p> <p>19 Q. Yes.</p> <p>20 A. Well, it's not going to be an efficient 21 contract if fighters come along and say I'm not 22 signing that and they go somewhere else. A 23 procompetitive contract is one that maximizes, 24 loosely speaking, the value of output, and there's 25 not going to be out -- well, Zuffa's not going to</p>	<p style="text-align: right;">294</p> <p>1 promotion than it does under its existing 2 contracts?</p> <p>3 A. Well, under its existing contracts they 4 might lose people who move. In that sense -- in 5 that sense only that would be one effect, but 6 you've also posited a world where everybody wants 7 to fight for Zuffa anyway. So maybe they don't 8 have to promote so much because everybody wants 9 to -- wants to watch Zuffa anyway.</p> <p>10 Q. Turn to paragraph 95 and 96 -- or turn to 11 95 first, please.</p> <p>12 A. Okay. We're back in my report, right?</p> <p>13 Q. We are.</p> <p>14 A. Yeah.</p> <p>15 Q. In paragraphs 95 and 96 you're talking 16 about --</p> <p>17 A. I'm sorry. I'm on page 95.</p> <p>18 Q. Page 41.</p> <p>19 A. Yes.</p> <p>20 Q. There you're talking about co-promoted 21 matches. What are copromoted matches?</p> <p>22 A. Where two promoters, say Bellator and 23 Zuffa, say let's have a match that mixes your guys 24 and our guys.</p> <p>25 Q. And you say there in the first sentence of</p>
<p style="text-align: right;">293</p> <p>1 participate in the output if they offer that 2 contract. Somebody else would because they 3 wouldn't be offering that contract.</p> <p>4 Q. Assume for the question that fighters so 5 much wanted to fight for the UFC because the UFC 6 currently has most of the top fighters that they 7 were willing to make that deal going in. Would it 8 then be procompetitive?</p> <p>9 MR. WIDNELL: Objection, form.</p> <p>10 BY THE WITNESS:</p> <p>11 A. Well, you know, I don't know because now 12 you're telling me that other people can offer 13 similar contracts. Other people can offer any 14 contract they want and implausibly Zuffa offers 15 this contract that says you're going to fight for 16 us forever and I don't know all the other forms of 17 the contract that you're talking about and 18 everybody lines up with Zuffa, then, I mean, one 19 could imagine that that has some value-producing -- 20 you know, salubrious value-producing consequence 21 that makes everybody want to go there, but I don't 22 know what it is. So I've not had to consider that 23 in the context of this matter.</p> <p>24 Q. Would you agree that under that contract 25 Zuffa would have more incentive to invest in</p>	<p style="text-align: right;">295</p> <p>1 paragraph 95 towards the end that copromoted 2 matches are apparently nonexistent; do you see 3 that?</p> <p>4 A. I recall the sentence. I'm looking for 5 the -- it's towards the end.</p> <p>6 Q. Of the first sentence.</p> <p>7 A. Oh, the first sentence?</p> <p>8 Q. I'm sorry. The second sentence.</p> <p>9 A. Yes.</p> <p>10 Q. You understand that the UFC --</p> <p>11 MR. WIDNELL: Objection, misstates, but go 12 ahead.</p> <p>13 BY MR. CRAMER:</p> <p>14 Q. The second sentence says "Copromoted 15 matches in which athletes from different MMA 16 promoters compete against one another are 17 apparently nonexistent." Did I read that 18 correctly?</p> <p>19 MR. WIDNELL: I'm sorry. I'm not -- 20 you're in paragraph 95?</p> <p>21 MR. CRAMER: Yes, second sentence.</p> <p>22 MR. WIDNELL: I apologize. Yes. I see. 23 I was looking at a different sentence. My 24 mistake.</p> <p>25 BY THE WITNESS:</p>

<p style="text-align: right;">296</p> <p>1 A. We're all on the same page.</p> <p>2 Q. All right. I read that correctly?</p> <p>3 A. Yes.</p> <p>4 Q. You understand that UFC refuses to</p> <p>5 copromote with other MMA promoters, correct?</p> <p>6 MR. WIDNELL: Objection, form.</p> <p>7 BY THE WITNESS:</p> <p>8 A. Whether that's a binding policy or not I</p> <p>9 don't know. I just know that they don't.</p> <p>10 Q. Have you seen evidence in the record where</p> <p>11 Dana White has said he will not copromote with</p> <p>12 other promoters?</p> <p>13 A. I don't recall that statement. I wouldn't</p> <p>14 be surprised that it's made.</p> <p>15 Q. Are you aware that other MMA promotions</p> <p>16 haven't engaged in co-promotion?</p> <p>17 MR. WIDNELL: Objection, form.</p> <p>18 BY THE WITNESS:</p> <p>19 A. Could you read -- I think you --</p> <p>20 Q. I'll restate the question.</p> <p>21 A. I think you said haven't when you probably</p> <p>22 meant have.</p> <p>23 Q. Thank you. Are you aware that other MMA</p> <p>24 promotions have indeed engaged in co-promotion?</p> <p>25 MR. WIDNELL: Objection, form.</p>	<p style="text-align: right;">298</p> <p>1 in copromotion, correct?</p> <p>2 A. With whom?</p> <p>3 Q. Does Zuffa have market power in the boxing</p> <p>4 promotion world?</p> <p>5 A. Not that I'm aware of.</p> <p>6 Q. And would you agree that if Zuffa engaged</p> <p>7 in copromotion in boxing in a market in which it</p> <p>8 does not have market power that that would be</p> <p>9 efficient?</p> <p>10 A. Well, you have to define copromotion</p> <p>11 now.</p> <p>12 Q. Promoting a bout with a fighter signed by</p> <p>13 the UFC against a fighter that wasn't signed by the</p> <p>14 UFC.</p> <p>15 A. Are we -- are we talking about Conor</p> <p>16 McGregor and his fight with -- what's his name?</p> <p>17 Merryweather Lewis?</p> <p>18 Q. Money Mayweather.</p> <p>19 A. Yeah. Okay. All right. So that's what</p> <p>20 we're talking about? Is that what we're talking</p> <p>21 about, that's the question.</p> <p>22 Q. Yes.</p> <p>23 A. Okay.</p> <p>24 Q. You're aware that Zuffa copromoted a</p> <p>25 boxing match between its own fighter, Conor</p>
<p style="text-align: right;">297</p> <p>1 BY THE WITNESS:</p> <p>2 A. You said -- could you read -- I think</p> <p>3 you --</p> <p>4 Q. I'll restate the question.</p> <p>5 A. I think you said haven't when you probably</p> <p>6 meant have.</p> <p>7 Q. Thank you. Are you aware that other MMA</p> <p>8 promotions have indeed engaged in procopromotion?</p> <p>9 A. You know, I recall that there are a few</p> <p>10 instances of copromotion and I can't remember what</p> <p>11 they -- I can't remember the context or who did</p> <p>12 it.</p> <p>13 Q. Are you aware that Pride used to do bouts</p> <p>14 with fighters from different MMA promotions before</p> <p>15 it was bought up by Zuffa?</p> <p>16 A. I don't recall what Pride did.</p> <p>17 Q. Are you aware that Strike Force before it</p> <p>18 was bought by Zuffa used to allow some of its</p> <p>19 fighters to go fight with other promotions?</p> <p>20 MR. WIDNELL: Objection, form.</p> <p>21 BY THE WITNESS:</p> <p>22 A. That's a different thing.</p> <p>23 Q. Are you aware of that?</p> <p>24 A. Yeah.</p> <p>25 Q. And you know that Zuffa recently engaged</p>	<p style="text-align: right;">299</p> <p>1 McGregor, and Mayweather?</p> <p>2 MR. WIDNELL: Objection, foundation.</p> <p>3 BY THE WITNESS:</p> <p>4 A. I'm not sure that it was copromotion in</p> <p>5 the sense that we've been talking about here, but</p> <p>6 I'm aware that Conor McGregor fought in that match</p> <p>7 and it was okay with UFC for him to do it.</p> <p>8 Q. The UFC promoted that match, correct?</p> <p>9 MR. WIDNELL: Objection, foundation.</p> <p>10 BY THE WITNESS:</p> <p>11 A. When you say promoted, promote means that</p> <p>12 they advertise the existence of the match going on</p> <p>13 and that Conor McGregor is a UFC athlete and he's</p> <p>14 fighting in this match or that they put the match</p> <p>15 on?</p> <p>16 Q. The former.</p> <p>17 A. Yeah, I'm aware they did that.</p> <p>18 Q. And you're aware that Mayweather is not</p> <p>19 under contract with the UFC, correct?</p> <p>20 A. Of course, yes.</p> <p>21 Q. And you would agree -- strike that.</p> <p>22 Have you done an analysis in your</p> <p>23 report -- strike that.</p> <p>24 Do you know whether the UFC intends to</p> <p>25 copromote in the sense that it copromoted the match</p>

<p style="text-align: right;">300</p> <p>1 between McGregor and Mayweather in boxing -- other</p> <p>2 boxing matches in the future?</p> <p>3 A. It would depend on whether it's in the,</p> <p>4 you know, management of UFC judges that it's in</p> <p>5 their business interest and whether someone comes</p> <p>6 along who's got the talents to compete at that</p> <p>7 level and whether they want to risk it.</p> <p>8 Q. And you understand that the fight between</p> <p>9 Mayweather and McGregor was profitable, correct?</p> <p>10 A. One assumes for the promoter of that</p> <p>11 fight.</p> <p>12 Q. And for the fighters, correct?</p> <p>13 A. One assumes.</p> <p>14 Q. All right. Back to Strike Force data.</p> <p>15 You testified yesterday relating to the Chow test</p> <p>16 and I have some follow-up questions.</p> <p>17 A. Okay.</p> <p>18 Q. You testified that when you ran your Chow</p> <p>19 test that Zuffa and Strike Force data did not come</p> <p>20 from the identical data-generating process,</p> <p>21 correct?</p> <p>22 A. I recall saying something like that, yeah.</p> <p>23 Q. And you testified that your Chow test</p> <p>24 could tell you if there was any reason to put these</p> <p>25 guys, the Strike Force guys in your words, in the</p>	<p style="text-align: right;">302</p> <p>[REDACTED]</p> <p>16 Q. You've heard of the term "yardstick,"</p> <p>17 right?</p> <p>18 A. Yeah.</p> <p>[REDACTED]</p>
<p style="text-align: right;">301</p> <p>1 regression, correct?</p> <p>2 A. I don't know if -- I would never have</p> <p>3 phrased it that way, but --</p> <p>4 Q. I'm quoting you.</p> <p>5 A. I don't remember saying it that way, but</p> <p>6 go ahead.</p> <p>[REDACTED]</p>	<p style="text-align: right;">303</p> <p>[REDACTED]</p> <p>4 Q. All right. You believe that your Chow</p> <p>5 test justifies the discarding of the Strike Force</p> <p>6 data unless the data-generating process for Strike</p> <p>7 Force is identical to the data-generating process</p> <p>8 for Zuffa; is that right?</p> <p>9 A. The point I'm making is that this is a</p> <p>10 different company and the Chow test demonstrates</p> <p>11 that it was different. Why you would put it in in</p> <p>12 the first place escapes me.</p> <p>13 Q. All right.</p> <p>14 A. So having said -- this is a different</p> <p>15 company, this is -- these athletes were not under</p> <p>16 management of Zuffa, their compensation was not</p> <p>17 determined by Zuffa, the contracts they signed were</p> <p>18 not signed by anybody from Zuffa, and yet they're</p> <p>19 being used for this. And what the Chow test</p> <p>20 demonstrated was, you know, not only shouldn't you</p> <p>21 put them in there in the first place, but they</p> <p>22 really are different. That's what the Chow test is</p> <p>23 demonstrating.</p> <p>24 Q. Strike Force was in the same market as</p> <p>25 Zuffa, correct?</p>

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<p style="text-align: right;">340</p> <p>1 now you've inserted firm. So no.</p> <p>2 Q. All right. Firms in a market, if I change</p> <p>3 the -- the -- all right. I'll reask the question</p> <p>4 this way. A market can have an infinite number --</p> <p>5 in order for a market to have a horizontal supply</p> <p>6 curve there would need to be an infinite number of</p> <p>7 equivalent workers at exactly the same wage; is</p> <p>8 that right?</p> <p>9 A. No.</p> <p>10 Q. What was wrong with that?</p> <p>11 A. Infinite. Does the -- the supply curve</p> <p>12 needs to be -- can be perfectly elastic over a</p> <p>13 relevant range where demand in this market is</p> <p>14 shifting and there will be no material effect on</p> <p>15 prices. I mean, there's not an infinite number of</p> <p>16 workers anywhere.</p> <p>17 Q. Okay. So a firm would need to have a</p> <p>18 substantial material number of equivalent</p> <p>19 workers -- I mean, a market would need to have a</p> <p>20 substantial number of equivalent workers at exactly</p> <p>21 the same wage in order for there to be a horizontal</p> <p>22 supply curve; is that right?</p> <p>23 A. I said over the relevant range.</p> <p>24 Q. Over the relevant --</p> <p>25 A. So if we -- if we have -- there needs to</p>	<p style="text-align: right;">342</p> <p>1 firm's here and there's other firms and I'm going</p> <p>2 to hire -- instead of trying to attract people to</p> <p>3 my taco stand I'm going to hire people from along</p> <p>4 the road between my firm and another firm and</p> <p>5 they're all uniformly distributed. I'm making up</p> <p>6 this model. And I'll get the same taco stand kind</p> <p>7 of thing on the input side. If I want to hire more</p> <p>8 I have to reach further down the road and it's</p> <p>9 costly to drive. So I'll increase the marginal</p> <p>10 price that I pay -- I'll have to increase the</p> <p>11 marginal price that I pay.</p> <p>12 Q. Okay. So let's take your taco stand</p> <p>13 example. You have to taco stand A on one side of</p> <p>14 the road and then a mile away you have taco stand</p> <p>15 B.</p> <p>16 A. Yeah.</p> <p>17 Q. Now let's say somebody puts a toll on that</p> <p>18 road and all of a sudden in order to get from taco</p> <p>19 stand A to taco stand B it costs a hundred dollars</p> <p>20 and before it used to cost zero dollars. All</p> <p>21 things equal, would that toll increase the mobility</p> <p>22 costs of workers?</p> <p>23 MR. WIDNELL: Objection, form.</p> <p>24 BY THE WITNESS:</p> <p>25 A. So now I'm -- just -- just so I'm clear,</p>
<p style="text-align: right;">341</p> <p>1 be enough to prevent the wage from rising when</p> <p>2 demand shifts.</p> <p>3 Q. All right.</p> <p>4 A. And enough depends on the circumstances.</p> <p>5 Q. Is it fair to say that when mobility of</p> <p>6 workers is -- becomes restricted or is costly firms</p> <p>7 in that market could obtain some monopsony power?</p> <p>8 A. Your statement is so broad and vague</p> <p>9 that -- you know, I'll come back to my taco stands.</p> <p>10 And there's some costs of going to the next taco</p> <p>11 stand so that people who live closest to my taco</p> <p>12 stand prefer my taco stand to the taco stand that's</p> <p>13 further away even though our tacos are in all other</p> <p>14 respects identical. That means that if I cut the</p> <p>15 price of my tacos more people come to me. If I</p> <p>16 raise the price of my tacos fewer people come to</p> <p>17 me. That is not a completely horizontal demand</p> <p>18 curve. So in that sense -- and that's the sense in</p> <p>19 which George is using it here in a lot of this</p> <p>20 discussion -- one might say that there's a degree</p> <p>21 of monopsony power if we define -- if we define</p> <p>22 monopsony power to mean that if I cut my price I</p> <p>23 sell more and if I raise my price I say monopsony</p> <p>24 power in that case. And you can do the same thing</p> <p>25 on the other side of the market. So, you know, my</p>	<p style="text-align: right;">343</p> <p>1 now I'm hiring workers for my taco stand?</p> <p>2 Q. Yes.</p> <p>3 A. So there's a toll that prevents people</p> <p>4 from the other side of town getting to my taco</p> <p>5 stand?</p> <p>6 Q. Yes, and vice-versa.</p> <p>7 A. Okay. So yeah, there's fewer people that</p> <p>8 I can hire from the other side of town.</p> <p>9 Q. So now as compared to a world with the</p> <p>10 hundred-dollar toll and the world without the</p> <p>11 hundred-dollar toll, the two taco stands in the</p> <p>12 world with the hundred-dollar toll have more</p> <p>13 monopsony power than the world without the</p> <p>14 hundred-dollar toll, correct?</p> <p>15 MR. WIDNELL: Objection, form.</p> <p>16 BY THE WITNESS:</p> <p>17 A. I think what you're trying to say is</p> <p>18 that -- let's say here's A and B taco stands and</p> <p>19 the middle of town is halfway in between, and then</p> <p>20 I build a wall, okay, the Berlin Wall there so</p> <p>21 people can't get across from -- from -- so people</p> <p>22 between halfway and my taco stand and the</p> <p>23 percentage -- there's nobody else in town -- can</p> <p>24 only work for my taco stand. They can't go work</p> <p>25 for the other taco stand.</p>

<p style="text-align: right;">344</p> <p>1 Q. Correct.</p> <p>2 A. Is that what we're saying?</p> <p>3 Q. Yes.</p> <p>4 A. Yeah. So these people have fewer options.</p> <p>5 I got it.</p> <p>6 Q. And when you compare the world with the</p> <p>7 Berlin Wall in your example in the world without</p> <p>8 the Berlin Wall, the firm with the Berlin Wall has</p> <p>9 more monopsony power, correct?</p> <p>10 A. The firm with the -- the firm -- I -- I</p> <p>11 won't be competing as aggressively to get people</p> <p>12 from across the place where the border is now. So,</p> <p>13 you know, I don't know how things played out in the</p> <p>14 output market. I mean, I understand what you're</p> <p>15 trying to say and you're saying the same thing</p> <p>16 here, and you're saying the same thing that I said.</p> <p>17 There's a degree of monopsony power. You didn't</p> <p>18 need the wall. I already said there's a degree of</p> <p>19 what some people would call monopsony power there</p> <p>20 by the fact that it is -- it is costly to move from</p> <p>21 A to B.</p> <p>22 Q. And --</p> <p>23 A. So if it became more costly to move from A</p> <p>24 to B, that degree of -- of control over price would</p> <p>25 increase a little bit.</p>	<p style="text-align: right;">346</p> <p>1 Q. So all things equal, the higher the</p> <p>2 mobility costs in the example the more monopsony</p> <p>3 power the firms in that example have, all things</p> <p>4 equal; is that right?</p> <p>5 MR. WIDNELL: Objection, form.</p> <p>6 BY THE WITNESS:</p> <p>7 A. It was important that you said twice "in</p> <p>8 that example." So I agree.</p> <p>9 Q. And in that example we're talking about</p> <p>10 taco stands, right? These aren't Taco Bell, right?</p> <p>11 It could be a small firm that has some degree of</p> <p>12 monopsony power; is that right?</p> <p>13 A. Yes. Well, as the term -- as we're using</p> <p>14 the term. It's just a dangerous term on both sides</p> <p>15 of the market.</p> <p>16 Q. Is it fair to say that one reason why</p> <p>17 non-Zuffa firms employ some of the challenged</p> <p>18 contractual provisions that we've talked about is</p> <p>19 to restrain the mobility of the fighters that work</p> <p>20 for them?</p> <p>21 A. It's to do all the things we've discussed</p> <p>22 before that -- you know, to see to it that they get</p> <p>23 the returns on their investments and that their</p> <p>24 ability to manage a multi-bout career progression</p> <p>25 is not interfered with.</p>
<p style="text-align: right;">345</p> <p>1 Q. So all things equal, the higher the</p> <p>2 mobility costs in your example the higher the</p> <p>3 monopsony power of the firms, correct?</p> <p>4 MR. WIDNELL: Objection, form.</p> <p>5 BY THE WITNESS:</p> <p>6 A. Yeah. It depends on how we make the</p> <p>7 mobility costs and things like that. It depends on</p> <p>8 what we do with the mobility costs.</p> <p>9 Q. We raise the costs. So go back to my toll</p> <p>10 example. Assume that the Berlin Wall costs \$100 to</p> <p>11 get from one side to the other and now assume it</p> <p>12 costs a thousand dollars to get from one side to</p> <p>13 the other. As compared to the world where it costs</p> <p>14 a hundred dollars to the world where it costs a</p> <p>15 thousand dollars, the firms in the world where it</p> <p>16 costs a thousand dollars would have a higher degree</p> <p>17 of monopsony power than the -- all things equal,</p> <p>18 than the firms in the world where it costs a</p> <p>19 hundred dollars.</p> <p>20 A. I think what you're trying to establish is</p> <p>21 that the people on my side of the wall have fewer</p> <p>22 places -- because there's only two places, have</p> <p>23 fewer places at which they can work and that</p> <p>24 affects the wage that I have to pay to get them to</p> <p>25 work for me, and I agree with that.</p>	<p style="text-align: right;">347</p> <p>1 Q. And one way in which they achieve those</p> <p>2 ends is by restricting the mobility of the workers,</p> <p>3 correct?</p> <p>4 A. In the sense that I just used, yes.</p> <p>5 Q. And so in that sense even these smaller</p> <p>6 promotions can use these contracts to gain some</p> <p>7 measure of monopsony power; is that right?</p> <p>8 A. No.</p> <p>9 [REDACTED]</p> <p>10 [REDACTED]</p> <p>11 [REDACTED]</p> <p>12 [REDACTED]</p> <p>13 [REDACTED]</p> <p>14 [REDACTED]</p> <p>15 [REDACTED]</p> <p>16 [REDACTED]</p> <p>17 [REDACTED]</p> <p>18 [REDACTED]</p> <p>19 [REDACTED]</p> <p>20 [REDACTED]</p> <p>21 [REDACTED]</p> <p>22 [REDACTED]</p> <p>23 [REDACTED]</p> <p>24 [REDACTED]</p> <p>25 [REDACTED]</p>

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1 MR. CRAMER: All right. I'd like to mark
2 as the next exhibit a piece of the testimony from
3 Scott Coker in this case. What exhibit?

THE REPORTER: 10.

(Topel Exhibit 10 was marked
as requested.)

BY MR. CRAMER:

Q. What you've just been handed is Exhibit 10.

A. Yep.

Q. It is a portion of the transcript of the deposition of Scott Coker that was taken August 3rd, 2017 and it was taken in this case.

A. This is the Bellator fellow?

Q. And Strike Force. He was at both.

A. Okay.

Q. Did you have an opportunity to review this deposition transcript?

A. Not in its entirety.

Q. You read some of it?

A. Some of it, yeah. I believe so.

Q. Turn to page 245 of the transcript which is on the third -- it's the third page of the exhibit. Do you see that on the bottom right-hand corner?

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A. You said 245, right?

Q. Yes.

A. 245 is the bottom right of the second page.

Q. Yes.

A. Okay.

Q. After the title page.

All right. I'm going to draw your attention to the testimony beginning at line 3 on page 245, and I'll read it into the record and then we can discuss it.

Q. All right. You can put that aside.

Have you seen evidence that -- in the record that certain MMA promotions other than Zuffa, smaller MMA promotions have said that they would abandon certain of the contractual provisions if the UFC would?

A. That sounds like something that might get you in antitrust trouble anyway, but the -- I haven't seen statements to that effect, but I'm sure you'll show me.

MR. CRAMER: Okay. All right. I'm going to have the court reporter mark as the next exhibit a series of e-mails.

(Topel Exhibit 11 was marked as requested.)

BY MR. CRAMER:

Q. The court reporter has marked as Exhibit 11 a two-page document bearing the Bates range ZFL-1904802 through 4803, and I'd like to draw your attention to the e-mail at the bottom of the page from Michael Chiappetta to Anthony Evans at the UFC.

A. Yes.

Q. And then I'm particularly talking about

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<p style="text-align: right;">352</p> <p>1 the run -- one at 4:43 p.m. from Chiappetta who is</p> <p>2 talking about a conversation he had with Bjorn</p> <p>3 Rebney. Bjorn Rebney was the head of Bellator at</p> <p>4 the time and this is dated September 25th, 2012.</p> <p>5 And I'd like to turn your attention to the next</p> <p>6 page where Chiappetta, who is a reporter, is</p> <p>7 reporting a conversation that Chiappetta had with</p> <p>8 Rebney to the UFC.</p> <p>9 A. Can I -- can I just read the rest of</p> <p>10 this.</p> <p>11 Q. Please do.</p> <p>12 (Witness reviewing document.)</p> <p>13 BY THE WITNESS:</p> <p>14 A. Remind me who Mike is because you've only</p> <p>15 got a Gmail address.</p> <p>16 Q. Mike Chiappetta is an MMA reporter.</p> <p>17 Anthony Evans is an executive at the UFC.</p> <p>18 A. So he's conveying some conversation that</p> <p>19 he had with somebody at Bellator; is that what he's</p> <p>20 doing?</p> <p>21 Q. Correct. Chiappetta communicated with</p> <p>22 Bjorn Rebney, who was the President of Bellator at</p> <p>23 the time, and then he's communicating a</p> <p>24 conversation that Chiappetta had with Rebney to the</p> <p>25 UFC. And on the second page of the e-mail --</p>	<p style="text-align: right;">354</p> <p>1 these clauses is to protect the investments that</p> <p>2 have already occurred.</p> <p>3 Now, on the first page here it says that</p> <p>4 "The matching rights clause for fighters that have</p> <p>5 been released, Bellator has it in their contracts</p> <p>6 and Dana" -- I take it that's Dana White -- "said</p> <p>7 last week that UFC has in their contracts too.</p> <p>8 Although he said it's never been used." So this</p> <p>9 is -- it's an equilibrium where this contract</p> <p>10 restriction has not been used. It could be still</p> <p>11 binding, but it hasn't been used.</p> <p>12 Q. Is it your opinion that the right to match</p> <p>13 clause has never been, quote/unquote, used?</p> <p>14 A. I didn't offer that opinion. I'm just</p> <p>15 saying that that's what it says here.</p> <p>16 Q. Is it your opinion that if the UFC has</p> <p>17 never during -- had never during a right to match</p> <p>18 period matched a rival's bid that that would mean</p> <p>19 the right to match clause had no effect in the</p> <p>20 marketplace?</p> <p>21 A. That was the implication that I was trying</p> <p>22 to convey at the end of my answer. That doesn't</p> <p>23 mean that it's not binding. It doesn't mean that</p> <p>24 it doesn't have an effect. It's not -- it's not</p> <p>25 put into the contracts for nothing. It serves a</p>
<p style="text-align: right;">353</p> <p>1 A. He says "Eventually"; is that sentence</p> <p>2 you'd like me to read?</p> <p>3 Q. Yes. Chiappetta says "Eventually he" --</p> <p>4 referring to Rebney -- said "he would be willing to</p> <p>5 do away with the section that allows them to</p> <p>6 release a fighter and retain matching rights if</p> <p>7 Zuffa would also do the same"; do you see -- do you</p> <p>8 see that?</p> <p>9 A. I see that.</p> <p>10 Q. Do you know whether Zuffa eliminated the</p> <p>11 right to match clause in response to Rebney's</p> <p>12 challenge?</p> <p>13 MR. WIDNELL: Objection, form.</p> <p>14 BY THE WITNESS:</p> <p>15 A. Well, you know, I don't know if there was</p> <p>16 an actual challenge. This is being relayed by a</p> <p>17 reporter. We know how sometimes that can get</p> <p>18 muddled. But I don't know if this is in -- this</p> <p>19 sounds like it's in the context of a particular</p> <p>20 transaction, but, you know, one wouldn't be</p> <p>21 surprised if some competitor would say, hey, you've</p> <p>22 invested a lot in all these folks, wouldn't you</p> <p>23 like to get rid of this clause because then, you</p> <p>24 know, it would give us greater access to the people</p> <p>25 you've invested in. That's the point of having</p>	<p style="text-align: right;">355</p> <p>1 purpose.</p> <p>2 Q. So even if the right to match clause has</p> <p>3 never been, quote/unquote, used, it's still having</p> <p>4 an effect in the marketplace, correct?</p> <p>5 A. It could be having an effect in the</p> <p>6 marketplace even if they've never had to invoke.</p> <p>7 Q. And why is that?</p> <p>8 [REDACTED]</p> <p>9 [REDACTED]</p> <p>10 [REDACTED]</p> <p>11 [REDACTED]</p> <p>12 [REDACTED]</p> <p>13 [REDACTED]</p> <p>14 [REDACTED]</p> <p>15 [REDACTED]</p> <p>16 [REDACTED]</p> <p>17 Q. Sounds to me like that answer said the</p> <p>18 right to match is not doing any work. How is the</p> <p>19 right to match doing any work, procompetitive work</p> <p>20 or anticompetitive work, economic work if Zuffa</p> <p>21 would just outbid any potential rival? Why doesn't</p> <p>22 Zuffa just get rid of the right to match, then, if</p> <p>23 it knows it can just outbid any rival?</p> <p>24 A. Well, we go through this in my report.</p> <p>25 [REDACTED]</p>

23 (Pages 352 to 355)

<p style="text-align: right;">356</p> <p>1 [REDACTED]</p> <p>2 [REDACTED]</p> <p>3 if it came down to, oh, why don't they just -- why</p> <p>4 don't they just outbid, well, if Bellator makes its</p> <p>5 best offer and it knows that Zuffa will match,</p> <p>6 then, you know, the returns to making its best</p> <p>7 offer aren't as high as otherwise. Now, take</p> <p>8 that -- take away the right to match and you come</p> <p>9 back to the example that I have in my report about</p> <p>10 the holdup problem where you're more valuable to</p> <p>11 Zuffa, the athlete knows it. So now you've got a</p> <p>12 bilateral negotiation where there's no determinant</p> <p>13 solution in economics except that it's going to be</p> <p>14 somewhere in between and depends on the relative</p> <p>15 intransigence of the two parties where you're going</p> <p>16 to end up.</p> <p>17 Q. So you just said --</p> <p>18 A. Let me finish. So I said that the -- what</p> <p>19 I've just described is the holdup problem that's in</p> <p>20 my report that the right of first refusal is</p> <p>21 designed to avoid.</p> <p>22 Q. One of the things you said is that if</p> <p>23 Bellator makes its best bid during a UFC right to</p> <p>24 match period the returns to Bellator to making that</p> <p>25 [REDACTED]</p>	<p style="text-align: right;">358</p> <p>1 to match period or a fighter who has waited a year</p> <p>2 and we're a day after the right to match period is</p> <p>3 over, would Bellator's incentives to make a bid be</p> <p>4 different once the right to match period expires</p> <p>5 than during the right to match?</p> <p>6 A. They could be, though there's a question</p> <p>7 of why Bellator make an offer in the right to match</p> <p>8 period and they're gaining information about this</p> <p>9 fighter from the fact that -- it's your</p> <p>10 hypothetical. There's no contract between Zuffa</p> <p>11 and the fighter a year after the end of his</p> <p>12 contract. So you're -- Bellator's looking at that</p> <p>13 at the end and saying, you know, winner's curse</p> <p>14 might be operative here. So if we win what is it</p> <p>15 that Zuffa knew about this fighter that we don't.</p> <p>16 Q. Well, assume that Zuffa made a bid and the</p> <p>17 fighter didn't accept it.</p> <p>18 A. Okay.</p> <p>19 Q. I'll withdraw it. I'm going to move on.</p> <p>20 Would you agree with me that the conduct</p> <p>21 engaged in by a firm without market power could</p> <p>22 be -- could have anticompetitive effects when that</p> <p>23 same conduct is engaged in by a firm with market</p> <p>24 power?</p> <p>25 A. That's conceivable.</p>
<p style="text-align: right;">357</p> <p>1 [REDACTED]</p> <p>2 [REDACTED]</p> <p>3 [REDACTED]</p> <p>4 that says here's what this athlete is worth to us</p> <p>5 and let us assume -- and that's the assumption of</p> <p>6 my example -- that the athlete is worth more</p> <p>7 because of past investments to Zuffa than to</p> <p>8 Bellator. So in making this offer you're not</p> <p>9 certain of what the value to Zuffa is, but it's</p> <p>10 very likely to be higher. So I put all the -- I</p> <p>11 put all the numbers into a contract, the athlete</p> <p>12 takes the contract to Zuffa, and Zuffa says done,</p> <p>13 we'll pay that, and that's our right of first</p> <p>14 refusal. And so we can invoke that.</p> <p>15 Q. So what effect, in your view, does that</p> <p>16 have Bellator's incentives to make a bid?</p> <p>17 A. Bellator may have -- well, relative to</p> <p>18 what because I don't -- if -- if it's -- I think we</p> <p>19 went over this yesterday. Suppose we canceled the</p> <p>20 right -- in one guy's contract, everybody else's</p> <p>21 contract stays the same. I know we did this --</p> <p>22 Q. I think I can make it easier.</p> <p>23 A. I know we did this yesterday.</p> <p>24 Q. We did. I think I can just make it</p> <p>25 easier. The right to -- a fighter during the right</p>	<p style="text-align: right;">359</p> <p>1 Q. How is that conceivable?</p> <p>2 A. Well, take the -- I mean, often in</p> <p>3 contract disputes under section 2, like exclusive</p> <p>4 dealing or loyalty discounts or something like</p> <p>5 that, under certain prerestrictive conditions</p> <p>6 things that have procompetitive effects can also</p> <p>7 have anticompetitive effects if certain conditions</p> <p>8 are satisfied.</p> <p>9 Q. Well, is bundling -- product bundling one</p> <p>10 of those examples? Product bundles has many</p> <p>11 procompetitive effects and when engaged in by a</p> <p>12 firm without market power in any of the markets in</p> <p>13 which the products they're bundling --</p> <p>14 MR. WIDNELL: Objection, form.</p> <p>15 BY MR. CRAMER:</p> <p>16 Q. I'll rephrase. Could bundling be one of</p> <p>17 those examples where product bundling can be</p> <p>18 anticompetitive when engaged in by a firm with</p> <p>19 market power and procompetitive when engaged in by</p> <p>20 a firm without market power?</p> <p>21 A. Yes, that's -- I mean, that and a myriad</p> <p>22 of other examples under section 2.</p> <p>23 MR. WIDNELL: I just want to make clear,</p> <p>24 you're asking for an economic opinion here, not a</p> <p>25 legal opinion; is that right?</p>

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1 MR. CRAMER: Yes. I'm not asking for any
2 legal opinion.
3 MR. WIDNELL: Okay. I just want to
4 avoid --
5 THE WITNESS: Yep, that's fine.
6 MR. WIDNELL: -- making that objection
7 over and over.
8 THE REPORTER: Guys.
9 BY MR. CRAMER:
10 **Q. Turn to paragraph 43, please. All right.**
11 **In paragraph 43 you quote a document. I believe**
12 **it's the Deutsche -- one of the Deutsche Bank**
13 **documents and I'm just looking for that. All**
14 **right. Towards the middle of paragraph 43 you say**

Age Group	Percentage of Respondents
18-29	85%
30-49	75%
50-69	80%
70+	70%

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6 Q. All right. I'm going to show you the
7 document that Dr. Singer was quoting and have it
8 marked as Exhibit 12.
9 (Topel Exhibit 12 was marked
10 as requested.)

11 BY MR. CRAMER:

12 **Q. And I'll note that you cite this document**

13 **in footnote 45.**

14 A. Okay.

15 **Q. It is entitled "UFC/Zuffa, LLC DBA**

16 **Ultimate Fighting Championship, Confidential**

17 **Information Memorandum." It's dated October 2009**

18 **and it was put out by Deutsche Bank. You've seen**

19 **this document before, correct?**

20 A. Yes.

21 **Q. And you recognize that Zuffa management**

22 **had input into this document, correct?**

23 A. One would assume.

24 **Q. All right. Turn to page 16 internally to**

25 **the document.**

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1 MR. WIDNELL: I just want to briefly note
2 an objection for completeness.
3 MR. CRAMER: Okay.
4 BY MR. CRAMER:
5 **Q. If there's something as you read through**
6 **this document that you think is missing, please let**
7 **me know. Okay?**
8 A. Okay. Sorry.
9 MR. WIDNELL: Just to be clear, it's not
10 in the document. The document was an attachment to
11 an e-mail.
12 MR. CRAMER: Oh, okay. Fair enough.
13 BY MR. CRAMER:
14 **Q. Fair to say in your report you don't cite**
15 **any e-mail that attaches this document, right?**
16 A. Not that I'm aware of.
17 **Q. Okay.**
18 **All right. On page 16 under the heading**

Government	Percentage
Current government	80%
Previous government	20%

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Group	Percentage
All respondents	95%
Male	90%
Female	95%
18-29	95%
30-49	95%
50-69	95%
70+	95%

13 Q. And is it your view that -- strike that.

14 I believe you testified that it is your

15 opinion that Zuffa is the market leader among MMA

16 promoters; is that right?

17 A. Yes.

18 Q. And would you agree that that was the case

19 since 2001?

20 A. I don't recall the circumstances

21 completely in 2001. The market was pretty small.

22 They might been the largest producer back then.

23 Q. And that remained the case from the date

24 of this document, October 2009, to the present,

25 correct?

<p style="text-align: right;">372</p> <p>1 present a competitive threat to the UFC?</p> <p>2 A. They might have. I think all firms in</p> <p>3 this market present a competitive threat to UFC.</p> <p>4 Q. So when Zuffa purchased Strike Force, for</p> <p>5 example, it was eliminating, in your opinion, a</p> <p>6 competitive threat; is that right?</p> <p>7 A. Well, no. The -- take Strike Force, for</p> <p>8 example. You know, everybody in the -- if they</p> <p>9 bought some small firm there's some competition</p> <p>10 from that firm, that's all I'm saying. I mean, we</p> <p>11 wouldn't want to say that these firms are in the</p> <p>12 market and they don't compete with Zuffa. They</p> <p>13 were competing for athletes, they were competing</p> <p>14 for eyeballs, they were competing, and the question</p> <p>15 is whether it was addressed by antitrust</p> <p>16 authorities and the like is whether these</p> <p>17 acquisitions materially affected competition in the</p> <p>18 market. Evidently they found that they didn't.</p> <p>19 So -- but these were -- these were firms operating</p> <p>20 and there are always benefits and potential costs</p> <p>21 of allowing acquisitions.</p> <p>22 Q. At the time that Strike Force was</p> <p>23 purchased in 2010, did Strike Force, in your</p> <p>24 opinion as an economist, present a significant</p> <p>25 economic threat to the UFC?</p>	<p style="text-align: right;">374</p> <p>1 not profitable and doesn't do business in the</p> <p>2 United States?</p> <p>3 Q. Is it your opinion that Bellator has</p> <p>4 substantial market share and is profitable?</p> <p>5 A. It's -- it's got a substantial position in</p> <p>6 the market and it seems to be surviving.</p> <p>7 Q. Is it your opinion that Bellator is</p> <p>8 profitable currently?</p> <p>9 A. Well, it's an ongoing entity. So the</p> <p>10 present discounted value of what those investors</p> <p>11 think that this project is worth must be</p> <p>12 positive.</p> <p>13 Q. Is it your opinion that the revenues that</p> <p>14 Bellator brings in in any year exceed the costs of</p> <p>15 running the organization in that year?</p> <p>16 A. I've not looked at the balance sheets of</p> <p>17 Bellator, but given that they're still in business,</p> <p>18 there must be some anticipation of positive cash</p> <p>19 flow even if it's negative today.</p> <p>20 Q. So you're saying that it's your</p> <p>21 understanding that there's an anticipation that</p> <p>22 Bellator will one day be profitable, but you don't</p> <p>23 understand that Bellator's profitable today; is</p> <p>24 that right?</p> <p>25 MR. WIDNELL: Objection, form.</p>
<p style="text-align: right;">373</p> <p>1 MR. WIDNELL: Objection, form.</p> <p>2 BY THE WITNESS:</p> <p>3 A. Not such a threat that the acquisition</p> <p>4 would have -- would have materially affected</p> <p>5 competition to the detriment of consumers and --</p> <p>6 and fighters.</p> <p>7 Q. Did Pride at the time it was purchased</p> <p>8 present a significant economic competitive threat</p> <p>9 to Zuffa at the time it was purchased?</p> <p>10 A. And my answer's the same.</p> <p>11 Q. Would it be the same for all of the</p> <p>12 entities?</p> <p>13 A. Yes.</p> <p>14 Q. Is it fair to say that even if we put the</p> <p>15 promoters that Zuffa acquired aside --</p> <p>16 A. Let me finish -- let me say -- I should</p> <p>17 have put the word "adversely" affect competition.</p> <p>18 Q. Is it fair to say, putting the promoters</p> <p>19 that Zuffa acquired aside, that your report does</p> <p>20 not identify a single MMA promotion other than</p> <p>21 Zuffa that does business in the United States that</p> <p>22 had substantial market share and was profitable?</p> <p>23 MR. WIDNELL: Objection, form.</p> <p>24 BY THE WITNESS:</p> <p>25 A. Are we -- are we saying that Bellator's</p>	<p style="text-align: right;">375</p> <p>1 BY THE WITNESS:</p> <p>2 A. Well, I'm not -- I'm not offering an</p> <p>3 opinion of whether they have positive cash flow</p> <p>4 today.</p> <p>5 Q. When in your --</p> <p>6 A. Just as Zuffa did not have positive cash</p> <p>7 flow when it was a young and nascent participant in</p> <p>8 this market.</p> <p>9 Q. When, in your opinion, did Bellator come</p> <p>10 to have significant market share in the United</p> <p>11 States?</p> <p>12 A. I don't recall the time series on</p> <p>13 Bellator's market share. I recall that they have</p> <p>14 television contracts. They're backed by Viacom and</p> <p>15 so on.</p> <p>16 Q. Putting Bellator aside for the moment, can</p> <p>17 you identify another MMA promotion that does</p> <p>18 business in the United States that has significant</p> <p>19 market share, in your opinion, and is profitable?</p> <p>20 A. Well, a lot of these must be profitable.</p> <p>21 King of the Cage has been around putting on dozens</p> <p>22 of events every year for many years. There's a</p> <p>23 long list of promoters that are -- that are doing</p> <p>24 this and -- you know, the market share you're</p> <p>25 referring to is very limited in its scope because</p>

<p style="text-align: right;">376</p> <p>1 it only focuses on a certain identified group of</p> <p>2 fighters, but on any given weekend there are</p> <p>3 hundreds -- or any given month, let's say,</p> <p>4 hundreds, maybe thousands of these events going on</p> <p>5 across the country that have nothing to do with</p> <p>6 Zuffa.</p> <p>7 Q. Is it your opinion that King of the Cage</p> <p>8 has a -- earns a substantial share of the revenues</p> <p>9 brought in by MMA events in the United States?</p> <p>10 A. That's not what I said. I just said it's</p> <p>11 out there, it's surviving, it must be making</p> <p>12 money.</p> <p>13 Q. Do you know whether King of the Cage</p> <p>14 copromotes events for other MMA promoters?</p> <p>15 A. They might.</p> <p>16 THE REPORTER: Can we take a break?</p> <p>17 MR. CRAMER: Yes. Let's go off the</p> <p>18 record.</p> <p>19 THE VIDEOGRAPHER: Going off the record at</p> <p>20 11:19.</p> <p>21 (A short break was had.)</p> <p>22 THE VIDEOGRAPHER: We're going back on the</p> <p>23 record at 11:35. This beginnings disk No. 3.</p> <p>24 BY MR. CRAMER:</p> <p>25 Q. You testified about certain MMA promotions</p>	<p style="text-align: right;">378</p> <p>1 and other stuff.</p> <p>2 Q. Well, let's talk about the Minor Leagues</p> <p>3 in baseball. Is it fair to say that one purpose to</p> <p>4 which NBA -- I'm sorry -- Major League Baseball</p> <p>5 clubs use the Minor Leagues is to develop talent</p> <p>6 that ultimately would make it to the Major Leagues</p> <p>7 correct?</p> <p>8 A. Of course.</p> <p>9 Q. And is there a similar purpose in MMA for</p> <p>10 Minor Leagues?</p> <p>11 MR. WIDNELL: Objection, form.</p> <p>12 THE REPORTER: I'm sorry. I can't hear</p> <p>13 you.</p> <p>14 MR. WIDNELL: Objection, form. Can you</p> <p>15 hear me?</p> <p>16 BY THE WITNESS:</p> <p>17 A. First of all, I don't think there are any</p> <p>18 Minor Leagues. Maybe the better analogy is to</p> <p>19 soccer where one can aspire to be premiere league</p> <p>20 and might move up over time. Whereas I don't think</p> <p>21 the -- I've got to remember a team that's in the</p> <p>22 Pacific. The Albuquerque whatever's are not</p> <p>23 aspiring to be a major league franchise.</p> <p>24 (Topel Exhibit 13 was marked</p> <p>25 as requested.)</p>
<p style="text-align: right;">377</p> <p>1 like King of the Cage a moment ago; do you recall</p> <p>2 that?</p> <p>3 A. Yes.</p> <p>4 Q. Are you aware that there's evidence that</p> <p>5 Zuffa considered some of these MMA promotions,</p> <p>6 quote/unquote, minor leagues?</p> <p>7 A. Yes.</p> <p>8 Q. What did it mean to be a minor league in</p> <p>9 the MMA business?</p> <p>10 A. I don't think there's a formal definition.</p> <p>11 I could only give you what, you know, somebody</p> <p>12 might extend from baseball to -- because that's</p> <p>13 where it -- the term is generally used, to some</p> <p>14 other sport.</p> <p>15 Q. So what does it mean to you in baseball?</p> <p>16 A. That, you know, the Minor Leagues like AAA</p> <p>17 or Pacific Coast Leagues or places where -- where</p> <p>18 athletes play either because they like playing or</p> <p>19 because they hope to make it to the Major Leagues.</p> <p>20 You can have a career there, that it's in the</p> <p>21 business, and the teams are viable.</p> <p>22 Q. And basketball has the G league; is that</p> <p>23 right? Used to be the D league.</p> <p>24 A. I don't know whether it's called the</p> <p>25 G league. The Continental Basketball Association</p>	<p style="text-align: right;">379</p> <p>1 BY MR. CRAMER:</p> <p>2 Q. All right. I've had the court reporter</p> <p>3 mark as Topel Exhibit 13 the next document. I'm</p> <p>4 going to put it in front of you. This is a</p> <p>5 document written by Zuffa's lawyers, Axinn Veltrop</p> <p>6 Harkrider, LLP. It's entitled "The FTC's</p> <p>7 Investigation of Zuffa's Conduct Should be Closed."</p> <p>8 It bears the Bates range ZFL-1212232 through 259,</p> <p>9 and I'll note for the record that you cite this</p> <p>10 document in paragraph 79, footnote 134. You can</p> <p>11 verify that. Page 34.</p> <p>12 (Witness reviewing document.)</p> <p>13 BY THE WITNESS:</p> <p>14 A. Okay.</p> <p>15 Q. The document you're citing is in</p> <p>16 paragraph -- footnote 134.</p> <p>17 A. Yes.</p> <p>18 Q. Okay. So you recall this document?</p> <p>19 A. I recall elements of this document. As I</p> <p>20 look at the cover of it, I don't recall the</p> <p>21 cover.</p> <p>22 Q. And it was written by Zuffa's lawyers</p> <p>23 relating to the UFC's acquisition of Strike Force;</p> <p>24 is that right?</p> <p>25 [REDACTED]</p>

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A. Let's see where we can go with that. If it turns out to be false, I'm sure that the

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BY MR. CRAMER:

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A. Yeah. I'm a senior consultant there. We're not in the same office. I don't interact with Mr. Dick.

<p style="text-align: right;">388</p> <p>1 Q. It was in early 2010, I believe March.</p> <p>2 A. It doesn't matter for anything I've -- any</p> <p>3 of my answers.</p> <p>4 Q. Fair enough.</p> <p>5 All right. In the next sentence you say</p> <p>6 "Invicta has also succeeded by promoting only</p> <p>7 women's MMA in five weight classes."</p> <p>8 A. Yes.</p> <p>9 Q. In your opinion, was Invicta a competitive</p> <p>10 threat to the UFC?</p> <p>11 MR. WIDNELL: Objection, form.</p> <p>12 BY THE WITNESS:</p> <p>13 A. My answer is the same. Invicta is another</p> <p>14 firm in the business. So the totality of all the</p> <p>15 firms in the market are substitutes for what UFC</p> <p>16 offers. So if you look up there at the top,</p> <p>17 Dr. Singer measures a market share, flawed and</p> <p>18 overstated Zuffa's actual market share. This is</p> <p>19 the point I was making before we took our break,</p> <p>20 that -- that there's all kinds of firms recruiting</p> <p>21 athletes and putting on events and they all aspire</p> <p>22 to differentiate their product in just a little</p> <p>23 way -- in some way just like the taco stand that we</p> <p>24 talked about and they're competing. So I don't</p> <p>25 have to think about a single firm as the</p>	<p style="text-align: right;">390</p> <p>1 the court reporter mark the next document as -- oh,</p> <p>2 this is not the one I want. I'm sorry. Excuse me.</p> <p>3 All right. I'd like to have the court reporter</p> <p>4 mark as Exhibit 14 the next document.</p> <p>5 (Topel Exhibit 14 was marked</p> <p>6 as requested.)</p> <p>7 BY MR. CRAMER:</p> <p>8 Q. All right. Exhibit 14 that the court</p> <p>9 reporter just marked is a two-page series of</p> <p>10 e-mails bearing the Bates range ZFL-12535916 and</p> <p>11 917. And the cover e-mail is from Kirk Hendrick to</p> <p>12 John Mulkey dated November 21, 2013. Have you seen</p> <p>13 this document before?</p> <p>14 A. I might have. I recognize names.</p> <p>15 Q. Mr. Mulkey is the UFC's CFO; is that</p> <p>16 right?</p> <p>17 A. That's my recollection, yes.</p> <p>18 Q. And Kirk Hendrick was one -- was the UFC's</p> <p>19 general counsel at one time?</p> <p>20 A. I don't remember that, but that could</p> <p>21 be -- I'll accept that for the purpose of this</p> <p>22 discussion.</p> <p>23 Q. He was an executive at the UFC; is that</p> <p>24 right?</p> <p>25 A. That's my recollection.</p>
<p style="text-align: right;">389</p> <p>1 competitive constraint on what Zuffa does or on</p> <p>2 what other firms do, what Bellator does. It's the</p> <p>3 integral, if you will, the totality of it that</p> <p>4 matters. As I said, there are thousands of events</p> <p>5 going on across the country and across the world in</p> <p>6 this sport.</p> <p>7 Q. All right. I move to strike that as</p> <p>8 nonresponsive.</p> <p>9 You know that Invicta's president</p> <p>10 [REDACTED]</p> <p>11 [REDACTED]</p> <p>12 [REDACTED]</p> <p>13 [REDACTED]</p> <p>14 [REDACTED]</p> <p>15 [REDACTED]</p> <p>16 [REDACTED]</p> <p>17 [REDACTED]</p> <p>18 [REDACTED]</p> <p>19 [REDACTED]</p> <p>20 Q. Do you know whether the UFC considers</p> <p>21 Invicta a major league MMA promoter or a minor</p> <p>22 league MMA promoter?</p> <p>23 A. I don't recall. It doesn't matter to my</p> <p>24 opinions.</p> <p>25 MR. CRAMER: All right. I'd like to have</p>	<p style="text-align: right;">391</p> <p>1 Q. And he was there for a very long time,</p> <p>2 correct?</p> <p>3 A. I don't know how long he was there.</p> <p>4 [REDACTED]</p> <p>5 [REDACTED]</p> <p>6 [REDACTED]</p> <p>7 [REDACTED]</p> <p>8 [REDACTED]</p> <p>9 [REDACTED]</p> <p>10 [REDACTED]</p> <p>11 [REDACTED]</p> <p>12 [REDACTED]</p> <p>13 [REDACTED]</p> <p>14 [REDACTED]</p> <p>15 [REDACTED]</p> <p>16 [REDACTED]</p> <p>17 [REDACTED]</p> <p>18 [REDACTED]</p> <p>19 [REDACTED]</p> <p>20 [REDACTED]</p> <p>21 [REDACTED]</p> <p>22 [REDACTED]</p> <p>23 [REDACTED]</p> <p>24 [REDACTED]</p> <p>25 [REDACTED]</p>

<p style="text-align: right;">392</p> <p>11 Q. Is it fair to say that Zuffa purchased 12 Invicta's entire straw weight division? 13 THE REPORTER: Straw? 14 MR. CRAMER: Straw weight, S-T-R-A-W. 15 BY THE WITNESS: 16 A. I believe that that's true. 17 Q. Do you know one way or another whether 18 Zuffa believed that Invicta was in essence a 19 women's minor MMA league? 20 MR. WIDNELL: Objection, form. 21 BY THE WITNESS: 22 A. Beyond this I have no recollection of 23 whether they -- somebody there, everybody there, or 24 whether Invicta thought they were a women's minor 25 league. I just don't know.</p>	<p style="text-align: right;">394</p> <p>1 A. Okay. 2 Q. Have you seen any evidence that any of the 3 fighters you discuss in paragraph 74, 75, or 76 4 that Zuffa wanted to keep any of them? 5 A. I haven't -- I haven't examined the 6 details of any negotiations between the fighters or 7 their agents and Zuffa representatives.</p> <p>22 MR. CRAMER: I'd like to have the court 23 reporter mark as Exhibit 15 the next document. 24 (Topel Exhibit 15 was marked 25 as requested.)</p>
<p style="text-align: right;">393</p> <p>1 Q. Okay. You can put that aside. 2 Turn to paragraph 74 of your report, 3 please. In paragraph 74 through 76 you identify 4 fighters who competed in UFC who then went on to 5 compete for other MMA promotions; is that right? 6 A. Yes, I do. 7 Q. Do you have any evidence that -- with 8 respect to any of the fighters that you discuss in 9 these paragraphs that Zuffa wanted to keep them? 10 A. You mean do I have some e-mail that says 11 we want to keep this person? No. Only that 12 they've gone on to fight elsewhere and they've -- 13 they've -- they've demonstrated some success. 14 Q. All right. So with respect to the 15 fighters you identify in paragraph 74, 75, and 76, 16 you don't know one way or another whether Zuffa cut 17 the fighters and then they went on to have success 18 at other promotions or whether Zuffa -- or whether 19 these fighters went to other promotions against the 20 will of Zuffa? 21 MR. WIDNELL: Objection, form. 22 BY THE WITNESS: 23 A. Against the will of Zuffa? 24 Q. Do you know when -- I'll withdraw the 25 question.</p>	<p style="text-align: right;">395</p> <p>1 BY MR. CRAMER: 2 Q. And it bears the Bates No. Raine, 3 R-A-I-N-E, 0020633. 4 A. Yes. 5 Q. Are you aware of what Raine is? 6 A. I don't recall anything about Raine. 7 Q. Raine was a consultants that did some work 8 relating to the WME acquisition of Zuffa. Does 9 that refresh your recollection? 10 A. It doesn't refresh my recollection with 11 respect to a name, but I would not be surprised if 12 they -- they retained outside consultants for 13 purposes of doing things.</p>

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<p style="text-align: right;">396</p> <p>[REDACTED]</p> <p>16 Q. Yeah. And does that -- is that consistent 17 with your understanding of Zuffa's retention rate 18 with athletes? 19 MR. WIDNELL: Objection, form. 20 BY THE WITNESS: 21 A. I have no knowledge of any precise number 22 of Zuffa's retention rate. 23 Q. Can you identify -- 24 A. I will tell you that I've heard phrases 25 like this a thousand times at -- where I work that</p>	<p style="text-align: right;">398</p> <p>[REDACTED]</p> <p>12 Q. Someone in Zuffa wanted someone at WME who 13 was thinking of spending \$4 billion for Zuffa to 14 know that Zuffa never lost a fighter that Zuffa 15 wanted to keep, right? 16 A. Yes. And put that in the context of what 17 I just said. If the guy doesn't want to be part 18 of -- I could see how management says the people 19 who don't want to be here are the ones that we 20 don't want to keep because we're working on the 21 value of the brand. I'm not trying to argue with 22 you. I'm just trying to see this -- interpret what 23 this thing says in context. 24 Q. All right. You can put that aside. 25 Turn to paragraph 103, please. Actually,</p>
<p style="text-align: right;">397</p> <p>1 we've never let a faculty member go that we wanted 2 to keep, and often that means is he wanted to go so 3 we didn't want to keep him because, you know, he's 4 part of the specific capital here or he's not. So 5 we're kind of proud of ourselves where I work and a 6 lot of the guys take it as, hey, if he didn't want 7 to be here we didn't want him to be here. I've 8 heard these kinds of phrases a million times. It 9 doesn't mean anything here in the context of, oh, 10 we made guys an offer to stay and they left. I 11 don't know. 12 Q. Can you identify a single MMA fighter in 13 history that left the UFC that Zuffa wanted to 14 keep? 15 MR. WIDNELL: Objection, form. 16 BY THE WITNESS: 17 A. Well, I can't because I don't know whether 18 they wanted to keep them.</p> <p>[REDACTED]</p>	<p style="text-align: right;">399</p> <p>1 you don't need to look at 103. I'm going to ask it 2 separately from 103. I don't think 103 helps for 3 you to understand the question.</p> <p>[REDACTED]</p>

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24 **Q. Well, let's say the UFC comes to this**
25 **fighter, as it frequently did I think you pointed**

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1 out in your report, before the last bout in his
2 contract and says I have a new contract for you,
3 it's got four more bouts, it will include higher
4 compensation, sign it. In order for the fighter to
5 leave the UFC he'd have to turn that down,
6 correct?

7 MR. WIDNELL: Objection, form.

8 BY THE WITNESS:

9 A. Well, I don't know if he has to turn it
10 down or not. The university puts a contract in
11 front of me and I say I'm not signing it yet.

12 **Q. Okay.**

13 A. You know, it's a -- I don't know what the
14 fuse is. I don't know anything about this
15 negotiation so far except what you're telling me.

16 Q. At minimum he would have to say I'm not
17 signing it yet, correct?

18 A. Yeah. He wouldn't sign it yet because you
19 have -- you've assumed that he was really hoping to
20 go somewhere else.

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<div>1</div> <div>404</div> <div>[REDACTED]</div>	<div>406</div> <div>[REDACTED]</div>
<div>405</div> <div>[REDACTED]</div>	<div>407</div> <div>[REDACTED]</div>

36 (Pages 404 to 407)

DAVID FELDMAN WORLDWIDE, INC.
450 Seventh Avenue - Ste 502, New York, NY 10123 1.800.642.1099

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A. Can I see what you're reading?

Q. Sure. We'll mark it as the next exhibit.

(Topel Exhibit 16 was marked
as requested.)

BY MR. CRAMER:

Q. What's been marked as Exhibit 16 is a two-page series of e-mails bearing the Bates range ZFL-1000978 through 979. The top has an e-mail from Lawrence Epstein to Michael Mersh CC'g Joe Silva dated May 2nd, 2013.

A. Let me just read the document.

I guess I -- should I be reading this in reverse order?

Q. Yes.

A. Does it begin at the -- okay.

Q. The first e-mail's at the bottom.

A. Okay.

Q. I'll walk you through it. The first

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411

e-mail at the bottom from --

A. No. Let me walk me through it. So...
(Witness reviewing document.)

BY THE WITNESS:

A. So who's McGann?

Q. He is Congo Cheick's representative.

A. Okay. Thank you.

(Witness reviewing document.)

BY THE WITNESS:

Q. Have you seen documents in this case where a fighter's representative said to Zuffa, look, you don't intend to give us another contract, my guy would like to go fight for another promotion, will you release him from the right to match and Zuffa said no?

A. There might be a case like that. There's a lot of -- there's a lot of situations that I've seen.

Q. Have you seen a situation regarding a fighter named Congo?

A. Congo, that name rings a bell, but I can't say that I recall the situation of Congo.

[REDACTED]	412
[REDACTED]	6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25
[REDACTED]	414
[REDACTED]	Q. Okay. You can put that aside. Turn to paragraph -- MR. CRAMER: Well, it's about 12:20. Why don't we go off the record. THE VIDEOGRAPHER: Going off the record at 12:22. (Whereupon, at 12:22 p.m., the deposition was recessed, to reconvene at 1:00 p.m., this same day.)
[REDACTED]	413
[REDACTED]	1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25
[REDACTED]	415
[REDACTED]	AFTERNOON SESSION (1:13 p.m.) THE VIDEOGRAPHER: We are going back on the record at 1:13. ROBERT TOPEL, the witness at the time of recess, having been previously duly sworn, was further examined and testified as follows: EXAMINATION (Resumed) BY MR. CRAMER: Q. Now, we did touch on this a little yesterday, but I just want to make sure the record is clear. Would you agree with me that as the

<p style="text-align: right;">416</p> <p>1 marginal revenue product of MMA fighters rises, 2 event revenues rise, all things equal? 3 MR. WIDNELL: Objection, form. 4 BY THE WITNESS: 5 A. You're not saying the other way around. 6 Is it -- is it like something that causes marginal 7 revenue product to rise -- I mean, it doesn't have 8 to come through events. So -- I mean, I -- we're 9 selling stuff, all kinds of things. The marginal 10 revenue product of a fighter is conceptually adding 11 a fighter to the group of other fighters and all 12 the other resources that the firm has and how much 13 revenue goes up. Whether that's realized in event 14 revenue I don't know and so -- an increase in the 15 revenues of the firm attributable to fighters would 16 cause the marginal revenue product of any given 17 fighter to be higher. 18 Q. So, all things equal, increase in event 19 revenues would cause the marginal revenue product 20 of any given fighter to rise; is that right? 21 A. No. No. I mean, revenues can increase 22 without for any given fighter his marginal revenue 23 product going up. 24 Q. The collective marginal -- the collective 25 marginal revenue product of MMA fighters generally,</p>	<p style="text-align: right;">418</p> <p>1 equilibrium. Let's talk about the short term. 2 A. All you're saying -- when you say "short 3 term," you're still talking about equilibrium. 4 You're just telling me that you -- what you want to 5 assume now is that supply's kind of inelastic in 6 the marketplace. 7 Q. Over the short run. 8 A. Whatever run you want. Okay. Yeah. 9 Q. With that assumption, with supply 10 inelastic in the short run, is it fair to say that 11 as fighter marginal revenue product increases, all 12 things equal, you would expect event revenues to 13 increase? 14 A. Boy, now we're on -- if -- if -- I think I 15 understand what you're asking. If that's the 16 avenue through which marginal revenue product went 17 up, then, I mean, it could. 18 Q. Well, let's -- let's hold all revenue 19 streams constant other than revenue streams -- 20 other than event revenue streams for this question. 21 So the only revenues that -- strike that. I'll 22 withdraw the question and move -- I'll withdraw 23 that last question and move on. 24 Would you agree that one determinant of 25 event revenues is fighter marginal revenue product?</p>
<p style="text-align: right;">417</p> <p>1 is that a concept that makes sense to you? The 2 productivity of MMA fighters increases for some 3 reason. 4 MR. WIDNELL: Objection, form. 5 BY MR. CRAMER: 6 Q. Let's say -- 7 A. I just need -- I just need to think what 8 could be meant by the collective -- 9 Q. Let's say Zuffa over time invests 10 resources in promoting its fighters so that they 11 can bring in more event revenues over time. 12 A. Well, this is something we did talk about 13 in some detail yesterday, and some -- we even had a 14 picture that we worked on yesterday. Do you 15 remember that? 16 Q. I do, yes. 17 A. And there's a difference between the 18 marginal revenue product of a fighter at any given 19 level of fighters in equilibrium marginal revenue 20 product of a fighter. So if the marginal revenue 21 product of fighters in the industry went up but 22 supply's highly elastic, you could have no change 23 in the marginal revenue product of a fighter in 24 equilibrium because employment expands and so on. 25 Q. All right. Let's not talk about</p>	<p style="text-align: right;">419</p> <p>1 A. One -- we keep framing this in terms of 2 marginal revenue product. One determinant of event 3 revenues is the popularity and therefore, let's 4 say, willingness to pay of customers to watch. 5 Q. Okay. So one determinant of event 6 revenues is the popularity and willingness of 7 customers to pay to see fighters fight; is that 8 right? 9 A. Sure. 10 Q. And is it also fair to say that -- 11 A. Again, given the -- I don't want to call 12 it short run, but given the elasticity of supply of 13 events. 14 Q. Okay. And is it also fair to say that 15 fighter compensation is in part determined by the 16 willingness of people to spend money to watch 17 fighters fight? 18 A. It -- 19 MR. WIDNELL: Objection, form. 20 BY THE WITNESS: 21 A. Sorry. It depends on how elastic the 22 supply of fighters is. 23 Q. And if we make the same assumption for 24 this question that there's an upward sloping supply 25 curve, would you agree with me that fighter</p>

40 (Pages 420 to 423)

<p style="text-align: right;">424</p> <p>1 right?</p> <p>2 A. Depending on how everything else plays</p> <p>3 out, yeah.</p> <p>4 Q. I mean, you say in paragraph 200 -- we</p> <p>5 looked at this before in the same paragraph on page</p> <p>6 [REDACTED]</p> <p>7 [REDACTED]</p> <p>8 [REDACTED]</p> <p>9 Q. Okay. So just so I understand, it's your</p> <p>10 view that in computing damages in this case the</p> <p>11 appropriate pool of total event revenues is the</p> <p>12 amount of event revenues that the UFC would have</p> <p>13 brought in in the but-for world, not the actual</p> <p>14 world; am I right about that?</p> <p>15 A. Well, I mean, I don't want you to sneak in</p> <p>16 some sort of back-handed endorsement of the way</p> <p>17 Dr. Singer's performing the whole exercise, that</p> <p>18 it's based on some division of some share of</p> <p>19 revenues because I think that's a major critical</p> <p>20 mistake.</p> <p>21 Q. All right. I'm not trying to sneak that</p> <p>22 in.</p> <p>23 A. Well, I just -- but I've got to be careful</p> <p>24 here because you're getting me to endorse some</p> <p>25 concept that's -- you know, endorsing some aspect</p>	<p style="text-align: right;">426</p> <p>1 constant in the actual world that is not an</p> <p>2 appropriate assumption?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. And the reason why that's not</p> <p>5 appropriate is because what an economist should do</p> <p>6 in computing damages in an antitrust trust is take</p> <p>7 into account all of the differences that would</p> <p>8 occur in the but-for world, including the total</p> <p>9 amount of revenues available to pay damages, right?</p> <p>10 A. Well, you're assuming -- you're assuming</p> <p>11 the appropriateness in that statement of</p> <p>12 Dr. Singer's damage calculation that's based on a</p> <p>13 share of revenues, and I'm -- so I'll just put it</p> <p>14 in the context of his damage calculation, which is</p> <p>15 just wrong, even within that context if you assumed</p> <p>16 arguendo it was a way to calculate damages, you'd</p> <p>17 still have to take into account that the world's</p> <p>18 going to be different when those contract</p> <p>19 restrictions are removed.</p> <p>20 Q. Okay. Let's assume that we're talking</p> <p>21 about an economist that didn't use share in his or</p> <p>22 her damages analysis. They used wage level. So we</p> <p>23 don't have the share problem that I think we're</p> <p>24 getting hung up on. In that situation in</p> <p>25 attempting to compute the effect of challenged</p>
<p style="text-align: right;">425</p> <p>1 of a -- of a -- of an inappropriate procedure. But</p> <p>2 the only point I'm making here is that the value</p> <p>3 produced is going to be different in the but-for</p> <p>4 world than in the world we're in, and -- because,</p> <p>5 remember, my opinion is there aren't any damages.</p> <p>6 So what it means to calculate those damages by the</p> <p>7 procedures that Dr. Singer's using is kind of a --</p> <p>8 let's just put it this way, a very vague concept.</p> <p>9 Q. I understand you have your critiques of</p> <p>10 Dr. Singer's analysis. I'm just trying to</p> <p>11 understand the principles behind this particular</p> <p>12 criticism, and as I understand it the particular</p> <p>13 criticism is that to the extent Dr. Singer is</p> <p>14 assuming that revenues are constant in the actual</p> <p>15 world, that is not an appropriate assumption</p> <p>16 because what he should be focused on in computing</p> <p>17 damages are the revenues in the but-for world; is</p> <p>18 that right?</p> <p>19 A. Let's just say that you -- if I read back</p> <p>20 your entire sentence there, it was kind of long,</p> <p>21 and I just stopped with "because" -- I put a period</p> <p>22 before the "because" and if you'll read back what</p> <p>23 that says, I think I can agree with that</p> <p>24 statement.</p> <p>25 Q. Dr. Singer is assuming that revenues are</p>	<p style="text-align: right;">427</p> <p>1 conduct on compensation one would need to assess</p> <p>2 the total amount of revenues in the but-for world,</p> <p>3 not the actual world; is that right?</p> <p>4 MR. WIDNELL: Objection, form.</p> <p>5 BY THE WITNESS:</p> <p>6 A. Now I don't know -- where do revenues come</p> <p>7 into this now? We just took it out of the</p> <p>8 left-hand side. Maybe -- you know, if I wanted to</p> <p>9 do a proper analysis I might have to compute the</p> <p>10 market equilibrium in a world where revenues have</p> <p>11 changed, but for the purposes of some -- if all</p> <p>12 we're changing is the regression and saying we're</p> <p>13 going to put compensation on the left-hand side or</p> <p>14 the log of compensation on the left-hand side</p> <p>15 rather than the share of revenues of -- the wage of</p> <p>16 an athlete divided by event revenue, well, now</p> <p>17 revenues aren't in the model, correct? They just</p> <p>18 disappeared.</p> <p>19 Q. Well, let's say that the regression</p> <p>20 produced a percentage by which compensation was</p> <p>21 reduced as between the actual world and the but-for</p> <p>22 world. That's something that could happen with a</p> <p>23 regression, right?</p> <p>24 MR. WIDNELL: Objection, form.</p> <p>25 BY THE WITNESS:</p>

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<p style="text-align: right;">428</p> <p>1 A. Let's suppose we had a case that -- let me</p> <p>2 see if I can help you out or you can help me out or</p> <p>3 we can help each other out.</p> <p>4 Q. Good.</p> <p>5 A. Suppose there's a regression of wages on</p> <p>6 some all-agreed-upon conduct indicator. Okay? So</p> <p>7 there's -- and there's a before and after.</p> <p>8 Q. Okay.</p> <p>9 A. And we say that wages were 2 percent lower</p> <p>10 controlling for other stuff in the conduct period,</p> <p>11 okay, and we're not doing anything about the --</p> <p>12 forget critiques of whether the conduct -- and</p> <p>13 suppose it was a really good controlled experiment</p> <p>14 before and after.</p> <p>15 Q. Fair enough.</p> <p>16 A. Then there's a 2 percent impact of the</p> <p>17 conduct, okay, which, as I just said, we're all</p> <p>18 going to agree that this is right -- the right way</p> <p>19 to measure the conduct.</p> <p>20 Q. Understood.</p> <p>21 A. Then one would need the stipulation along</p> <p>22 with that that the practices in question didn't</p> <p>23 have some offsetting impact that would have raised</p> <p>24 pay because -- but we have a before and after</p> <p>25 that's the conduct period. So we've really taken</p>	<p style="text-align: right;">430</p> <p>1 A. For the experiment we just did, you know,</p> <p>2 we controlled for growth and other stuff and it was</p> <p>3 just the -- I think if we understand each other,</p> <p>4 it's a 2 percent reduction in wages. So give them</p> <p>5 2 percent of their wages.</p> <p>6 Q. Let's say that the conduct in question had</p> <p>7 another effect -- strike that. I get it. I'll</p> <p>8 move on.</p> <p>9 Paragraph 108, please. You state in</p> <p>10 paragraph 108 on page 47 -- I think I have the</p> <p>11 wrong paragraph here. Oh, I mean paragraph 109.</p> <p>12 You quote or paraphrase something from</p> <p>13 Dr. Singer. You say "As Dr. Singer notes, athletes</p> <p>14 value the opportunity to develop their careers by</p> <p>15 fighting against highly-ranked opponents and</p> <p>16 audiences are drawn to fights among highly ranked</p> <p>17 opponents"; do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. Do you agree with Dr. Singer's</p> <p>20 observation?</p> <p>21 A. That people want to fight highly ranked</p> <p>22 opponents?</p> <p>23 Q. Yes.</p> <p>24 A. Well, they want to fight highly-ranked</p> <p>25 opponents when they think they're ready to fight</p>
<p style="text-align: right;">429</p> <p>1 that into account.</p> <p>2 Q. So let's say in your example with the</p> <p>3 well-specified regression showing a 2 percent</p> <p>4 decrease in wages after when compared to before</p> <p>5 that revenues were different in the after period</p> <p>6 and the before period. Would you multiply the 2</p> <p>7 percent times the amount of revenues that you</p> <p>8 thought would be existing in the but-for world or</p> <p>9 the amount of revenues that would be existing in</p> <p>10 the actual world?</p> <p>11 MR. WIDNELL: Objection, form.</p> <p>12 BY THE WITNESS:</p> <p>13 A. Okay. Well, see, you know, I didn't</p> <p>14 succeed in getting us on the same page because you</p> <p>15 just multiplied by revenues. So revenues just came</p> <p>16 sneaking in through the back door. It was a</p> <p>17 2 percent change in their pay, their compensation,</p> <p>18 their salary.</p> <p>19 Q. Okay. I understand.</p> <p>20 A. Revenues is gone.</p> <p>21 Q. All right. Understood. Okay. So do you</p> <p>22 multiply, then, by the total amount of compensation</p> <p>23 paid to the workers in the actual world or the</p> <p>24 total amount of compensation you believe would have</p> <p>25 been paid to the workers in the but-for world?</p>	<p style="text-align: right;">431</p> <p>1 highly-ranked opponents.</p> <p>2 Q. And are audiences drawn to fights among</p> <p>3 highly-ranked opponents?</p> <p>4 A. I think -- I think ratings are higher. I</p> <p>5 think there was some evidence that ratings are</p> <p>6 higher when highly-ranked people fight against each</p> <p>7 other.</p> <p>8 Q. Do you agree that MMA fighters value the</p> <p>9 ability to develop their careers by fighting</p> <p>10 against highly-ranked opponents when they're ready</p> <p>11 to fight them?</p> <p>12 A. Yeah. I think that's why they sign up.</p> <p>13 That's one of the reasons they sign up.</p> <p>14 Q. Is it fair to say that a fighter can't --</p> <p>15 cannot advance in the rankings unless that</p> <p>16 fighter's able to fight other fighters that are</p> <p>17 ranked higher than them, right?</p> <p>18 MR. WIDNELL: Objection, form.</p> <p>19 BY THE WITNESS:</p> <p>20 A. I don't think that's literally true, but</p> <p>21 you don't have to fight somebody higher than you to</p> <p>22 move up.</p> <p>23 Q. But in order to substantially move up in</p> <p>24 the rankings, all things equal, it would be better</p> <p>25 for you to fight higher ranked fighters, correct?</p>

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<p style="text-align: right;">432</p> <p>1 MR. WIDNELL: Objection, form. 2 BY THE WITNESS: 3 A. Since I don't know exactly how the ratings 4 or the rankings happen, let's assume they're like 5 college football rankings, then you take into 6 account the types of opponents you've had and how 7 you did and somebody has a formula that tries to 8 take that into account. Same thing with golf 9 rankings and all sorts of things. 10 Q. All things equal, consumers will be 11 willing to pay more to see highly-ranked opponents 12 fight than lower-ranked opponents fight; is that 13 fair? 14 MR. WIDNELL: Objection, form. 15 BY THE WITNESS: 16 A. In every instance, no, but on average 17 probably yes. 18 Q. Higher ranked fighters, all things equal, 19 generate more revenues when they fight than 20 lower-ranked fighters, correct? 21 MR. WIDNELL: Objection, form. 22 BY THE WITNESS: 23 A. Not always, but on average that's probably 24 true. 25 Q. Turn to paragraph 96, please. In the</p>	<p style="text-align: right;">434</p> <p>1 platform that has been successful in attracting the 2 top athletes and that complementarity plays a 3 role. 4 Q. How do you define "significant share" as 5 you use that term in this sentence? 6 A. All other things equal, a firm that is 7 attracting the top athletes will see its share 8 among the top athletes rise. 9 Q. And that's because fighters generally have 10 an interest in competing against the best fighters, 11 right? 12 A. Well, that's part of it, but the 13 complementarity is there's more energy created when 14 you put the good fighters against each other. So 15 the -- the customers like that too. 16 Q. And those are the fights that would likely 17 lead to career advancement and higher compensation 18 ultimately, correct? 19 MR. WIDNELL: Objection, form. 20 BY MR. CRAMER: 21 Q. The ones with higher energy. 22 A. Broadly speaking. 23 Q. Broadly speaking, yes? 24 A. Broadly speaking, if I -- if I'm 25 successful against higher-ranked people, I will</p>
<p style="text-align: right;">433</p> <p>1 first sentence after the dash you state "There is a 2 natural tendency for a leading promoter to attract 3 a significant share of the top athletes?" 4 A. Yes. 5 Q. "This follows," you say, "from the 6 complimentarity of athlete talents in producing 7 high-quality bouts" -- 8 A. That's the point we just made. 9 Q. -- "and the desire among athletes to fight 10 against the best"; do you see that? 11 A. Yes. 12 Q. And you agree with that? 13 A. Yes. 14 Q. Can you please explain the natural 15 tendency for a leading promoter to attract a 16 significant share of the top athletes. What does 17 that mean? 18 A. It means that athletes -- their talents 19 are complementary, that the good athletes want to 20 be in the places where the -- where the other good 21 athletes are so they can fight them. And then 22 it's -- it's kind of a feedback system that you 23 attract some of the good athletes, they fight well, 24 it makes it more attractive for the other good 25 athletes, and so on. So Zuffa kind of runs a</p>	<p style="text-align: right;">435</p> <p>1 probably advance more and get paid more and so on, 2 as I understand the process. 3 Q. You can put that paragraph aside. 4 Would you agree with me that by 5 restricting fighter mobility used the challenged 6 contracts Zuffa's made it more difficult for other 7 MMA promotions to access UFC's top fighters, all 8 things equal? 9 A. No. 10 Q. Are you aware that Zuffa and banks working 11 with Zuffa have seen the challenged contracts and 12 describe the challenged contracts as barriers to 13 entry to rivals? 14 A. I think I know what you're -- to what you 15 are referring and I wouldn't characterize it that 16 way. 17 Q. All right. Would you take a look at what 18 has been marked as Exhibit 12. We marked it 19 earlier today. It was in the pile in front of you. 20 A. Exhibit -- 21 Q. 12. It is the -- 22 A. It's the Deutsche Bank? 23 Q. Correct. 24 A. What page do you want? 25 Q. I would like you to turn to page 7 of the</p>

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<p>436</p> <p>1 Deutsche Bank document.</p> <p>2 A. Yep.</p> <p>[REDACTED]</p>	<p>438</p> <p>[REDACTED]</p>
<p>437</p> <p>[REDACTED]</p>	<p>439</p> <p>[REDACTED]</p>

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<p>440</p> <p>[REDACTED]</p>	<p>442</p> <p>[REDACTED]</p> <p>20 MR. CRAMER: All right. I'd like to show</p> <p>21 you -- or have marked as Exhibit 17 the next</p> <p>22 document.</p> <p>23 (Topel Exhibit 17 was marked</p> <p>24 as requested.)</p> <p>25 BY MR. CRAMER:</p>
<p>441</p> <p>[REDACTED]</p>	<p>443</p> <p>1 Q. Exhibit 17 is a two-page series of e-mails</p> <p>2 bearing the Bates range WME-Zuffa-00013978 through</p> <p>3 979. The cover e-mail is from Brent Richard to</p> <p>4 Al Pfizenmaier and its subject is "Risks and</p> <p>5 mitigants" and it's dated --</p> <p>6 A. I'm a little confused. This one says it's</p> <p>7 from Brent Richard to Brent Richard. So...</p> <p>8 Q. -- and it's dated March 20, 2016. There's</p> <p>9 an e-mail at the bottom that he must have been</p> <p>10 sending it to himself --</p> <p>11 A. That's my --</p> <p>12 THE REPORTER: One at a time, please.</p> <p>13 THE WITNESS: Sorry.</p> <p>14 BY MR. CRAMER:</p> <p>15 Q. Do you know who Brent Richards is?</p> <p>16 A. It says here he's the global head of M&A</p> <p>17 at WME and IMG.</p> <p>18 Q. Okay. And you've seen this document</p> <p>19 before, right?</p> <p>20 A. Yeah, I probably saw this. I've seen</p> <p>21 thousands of documents.</p> <p>22 Q. Well, you rely upon it in your footnote 46</p> <p>23 and 407; is that right?</p> <p>24 A. Let's take a look at it, footnote 46 and</p> <p>25 407. What is this supporting -- okay. Okay. And</p>

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<p>448</p> <p>1 BY THE WITNESS:</p> <p>2 A. Yes.</p> <p>[REDACTED]</p>	<p>450</p> <p>[REDACTED]</p> <p>8 Q. All right. Would you agree with me that</p> <p>9 not all fighters are exact substitutes for each</p> <p>10 other?</p> <p>11 A. I'll agree with that.</p> <p>12 Q. Would you agree with me that some fighters</p> <p>13 are more important to an MMA promotion than others?</p> <p>14 MR. WIDNELL: Objection, form.</p> <p>15 BY THE WITNESS:</p> <p>16 A. Yes.</p> <p>17 Q. Some generate more revenues when they</p> <p>18 fight than others; is that right?</p> <p>19 A. Yes.</p> <p>20 Q. And those that are capable of generating</p> <p>21 more revenues when they fight, all things equal,</p> <p>22 are more valuable to their promotion than other</p> <p>23 fighters; is that right?</p> <p>24 A. The operative word there is generate, but</p> <p>25 go ahead.</p>
<p>449</p> <p>[REDACTED]</p>	<p>451</p> <p>1 Q. Is that right?</p> <p>2 A. It depends on how the particular fighter</p> <p>3 is -- is evaluated by the organization, but on</p> <p>4 average you'd rather have people who are capable of</p> <p>5 generating more revenue.</p> <p>6 Q. Would it be fair to say that, all things</p> <p>7 equal, the more a fighter is capable of generating</p> <p>8 revenue, all things equal, the more important it is</p> <p>9 for that promotion to ensure that that fighter</p> <p>10 cannot freely leave the promotion to go to another</p> <p>11 promotion?</p> <p>12 MR. WIDNELL: Objection, form.</p> <p>13 BY THE WITNESS:</p> <p>14 A. That was a complicated question. Could</p> <p>15 you read it back, please.</p> <p>16 Q. Yeah. Is it fair to say that, all things</p> <p>17 equal, the more revenues a fighter is capable of</p> <p>18 generating for a promotion the more important it is</p> <p>19 for that promotion to ensure that that fighter does</p> <p>20 not freely leave the promotion to go to another</p> <p>21 promotion?</p> <p>22 A. Well, no --</p> <p>23 MR. WIDNELL: Same objection.</p> <p>24 BY THE WITNESS:</p> <p>25 A. -- depends on what we're paying them. I</p>

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<p style="text-align: right;">452</p> <p>1 shouldn't have said we. I'm thinking about a 2 generic firm here. I've got somebody that's got a 3 high marginal product but I pay that person a lot. 4 You know, my incentive to retain that person 5 depends on how profitable that person is to me. So 6 if you change your question and say if this person 7 is really profitable to me would I rather not lose 8 them. 9 Q. Yes. 10 A. Yes. 11 Q. Turn to footnote 237, please, on page 74. 12 In the third sentence there -- you're talking about 13 a regression you did, and in the third sentence you 14 ██ 15 ██ 16 ██ 17 A. Let me read the footnote and stuff. 18 Q. Please do. 19 A. And actually -- okay. Here we go. 20 (Witness reviewing document.) 21 BY THE WITNESS: 22 A. Yes, now I've got to read 2 -- you want me 23 to read 237? 24 ██ 25 ██</p>	<p style="text-align: right;">454</p> <p>1 don't remember any documents that say we're going 2 to -- we think -- we think of weighting or we think 3 of ranking in the following way, but I guess I'd be 4 surprised if they weren't interested in that. 5 Q. Are you aware that state athletic 6 commissions use ranking in deciding whether or not 7 to approve fights that MMA promoters like Zuffa 8 propose to the commissions? 9 A. Let me just clarify. Are you -- first of 10 all, I'm not aware that they use ranking. Okay? 11 Q. Okay. Would that surprise you? 12 A. No. 13 Q. Why not? 14 A. I suppose it's because -- what immediately 15 came to mind, although this isn't part of my 16 opinion anywhere, I don't want to be thrown like me 17 in against some really accomplished guy, you know, 18 because I'm going to end up not feeling very good 19 at the end of it. 20 Q. And rankings would help determine whether 21 you, an unranked MMA fighter, and Conor McGregor 22 should be fighting against each other? 23 MR. WIDNELL: Objection, form. 24 BY THE WITNESS: 25 A. He could beat me with both hands tied</p>
<p style="text-align: right;">453</p> <p>1 ██ 2 ██ 3 ██ 4 ██ 5 Q. And that's because, all things equal, it's 6 possible that an athlete's ranking would bear upon 7 its compensation? 8 A. Well, to put it more broadly, the -- when 9 we're comparing the compensation across time, we 10 want to do as much as we can to hold constant the 11 composition of the fighters in different years. 12 Q. Would you agree that an athlete's 13 ranking -- that, all things equal, the higher an 14 athlete's rank the higher a compensation he will 15 make? 16 MR. WIDNELL: Objection, form. 17 BY THE WITNESS: 18 A. That should -- did you say on average 19 something? 20 Q. On average. 21 A. I wouldn't be surprised if that's true. 22 Q. Do you know whether or not Zuffa uses an 23 athlete's ranking in considering how much to pay a 24 fighter? 25 A. I haven't looked. If I have looked, I</p>	<p style="text-align: right;">455</p> <p>1 behind his back. 2 Q. And probably both legs tied behind his 3 back. All right. 4 ██ 5 ██ 6 ██ 7 ██ 8 ██ 9 ██ 10 ██ 11 ██ 12 ██ 13 ██ 14 ██ 15 ██ 16 ██ 17 ██ 18 ██ 19 ██ 20 ██ 21 ██ 22 ██ 23 ██ 24 ██ 25 ██</p>

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<p style="text-align: right;">460</p> <p>1 when you run this regression you're going to get 2 that. Unless, as you say, they had some 3 mechanical -- another mechanical thing in there 4 that says every time our revenues go up by 10 5 percent we're going to increase compensation by 10 6 percent, okay, but we're doing a monopsony case 7 here where the allegation is that they reduce 8 compensation. So even if they didn't reduce 9 compensation, even if they didn't change it, even 10 if they increased it by some smaller amount, a bump 11 on this side is going to cause a reduction on this 12 side. It's kind of a teeter-totter.</p> <p>[REDACTED]</p> <p>22 Q. And if it did, then there would be no 23 negative correlation between this foreclosure 24 measure and athlete's share of revenue, right? 25 MR. WIDNELL: Objection, form.</p>	<p style="text-align: right;">462</p> <p>1 A. I was making a point about the comparative 2 advantage and success of Zuffa. So as Zuffa 3 becomes more successful relative to other firms -- 4 I think I even phrased it this way -- its 5 revenue-weighted share is going to rise. 6 Q. But the mere fact that Zuffa's event 7 revenues are rising would not automatically cause 8 Zuffa's foreclosure shares to rise, right? 9 A. If everybody's event revenues rose at the 10 same rate, that would leave Zuffa's -- what he 11 calls -- the share that Mr. Singer calculates 12 would -- if I recall correctly, would not change. 13 Q. Turn to paragraph 227, please. You say 14 there in the first sentence "The conceptual flaw in 15 Dr. Singer's use of revenue weighted input shares 16 is further illustrated by the following 17 implication. Revenue weighted input shares imply 18 that firms with significant market power in the 19 output market also have a significant market 20 share -- or significant share of the input market." 21 Do you see that? 22 A. Yes. 23 Q. And then you say a little bit further on 24 on page 98 "This result is not supported by the 25 economic literature which recognizes that firms</p>
<p style="text-align: right;">461</p> <p>1 BY THE WITNESS: 2 A. Then you don't need a regression because 3 you just told me the share never changes. So 4 you're just putting a constant on the left-hand 5 side. 6 Q. Assume for this question that Zuffa's 7 event revenues are increasing but at a slower rate 8 than event revenues at other MMA promotions. Okay? 9 A. Okay. 10 Q. In that instance, all things equal, 11 Zuffa's foreclosure share would fall, right? 12 MR. WIDNELL: Objection, form. 13 BY THE WITNESS: 14 A. So -- okay. So you keep the athletes the 15 same, but event revenues rise faster for others? 16 Yeah, that can happen. 17 Q. So in order for Zuffa's foreclosure share 18 under the revenue-weighted measure to increase, 19 Zuffa must be earning a growing share of all MMA 20 event revenues, right? 21 A. Yeah. I think that's the point we made in 22 our appendix. 23 Q. So rising Zuffa event revenues does not 24 automatically cause Zuffa's foreclosure shares to 25 mechanically increase, right?</p>	<p style="text-align: right;">463</p> <p>1 with significant market power and share in an 2 output market can operate in and have a small share 3 of a highly competitive input market"; do you see 4 that? 5 A. Yes. 6 Q. It's fair to say you don't cite anything 7 for that proposition in this report, correct? 8 A. Well, it's just -- you don't have to have 9 market power and inputs -- a firm that has market 10 power and inputs -- excuse me. A firm that has 11 market power and output doesn't -- for most of its 12 inputs doesn't have any market power. I mean, 13 Microsoft buys pencils. It doesn't have any 14 market -- if we stipulate that Microsoft has market 15 power in the output market for the operating 16 systems, it buys pencils competitively. 17 Q. Now, you're not saying that it's 18 impossible for a firm with monopoly power in the 19 output market to have monopsony power in an input 20 market, are you? 21 A. No. 22 Q. You're just saying that the former, 23 meaning monopoly power in the output market, 24 doesn't necessarily imply the latter, monopsony 25 power in the input market, right?</p>

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[illegible]

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<p>468</p> <p>[REDACTED]</p>	<p>470</p> <p>[REDACTED]</p>
<p>469</p> <p>[REDACTED]</p>	<p>471</p> <p>[REDACTED]</p> <p>13 Q. All right.</p> <p>14 Now, you say in paragraph 234 that when</p> <p>15 you compare exhibits -- I'm sorry. In 235 you say</p> <p>16 at the bottom of page 100 "A comparison of Exhibit</p> <p>17 28 to Exhibit 29 shows that much of the difference</p> <p>18 between Dr. Singer's original shares and the</p> <p>19 recalculated shares is due to Dr. Singer's use of</p> <p>20 revenue weights"; do you see that?</p> <p>21 A. Yep.</p> <p>22 Q. And I'm trying to understand how you draw</p> <p>23 that conclusion from a comparison between</p> <p>24 Exhibits 28 and 29 given that the shares in both</p> <p>25 Exhibit 28 and 29 are not revenue weighted?</p>

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<p style="text-align: right;">472</p> <p>1 A. His are revenue weighed, the green line.</p> <p>2 Q. Oh, the green line is revenue weighted?</p> <p>3 A. Yeah.</p> <p>4 Q. Okay. And that's what you mean?</p> <p>5 A. Yeah.</p> <p>6 Q. Okay. And just so I understand, in this</p> <p>7 analysis you treat a fighter ranked 1 as the same</p> <p>8 value as a fighter ranked 15; is that right?</p> <p>9 A. Yes.</p> <p>10 Q. For example, you would treat Nunez the</p> <p>11 same as you treat Rousey; is that right?</p> <p>12 A. I don't know whether I did that with those</p> <p>13 two particular fighters, but within a category that</p> <p>14 would be true. So we didn't inverse weight</p> <p>15 according to -- we didn't treat 15 as 1/15th of 1.</p> <p>16 Q. Okay.</p> <p>17 Turn to paragraph 229. So here you</p> <p>18 talk -- you point out that Nunez was the champion</p> <p>19 when she fought Rousey in December of 2016; is that</p> <p>20 right?</p> <p>21 A. Yes. That's my recollection.</p> <p>22 Q. And at that time Rousey was ranked 5th; is</p> <p>23 that right?</p> <p>24 A. Yes.</p> <p>25 [REDACTED]</p>	<p style="text-align: right;">474</p> <p>1 Turn to paragraph 65, please. You say in</p> <p>2 the second sentence on page 26 "In addition to the</p> <p>3 athletes identified by Dr. Singer in his input</p> <p>4 market definitions, MMA athletes have come from,</p> <p>5 among other places, collegiate or Olympic</p> <p>6 wrestling, boxing programs, martial arts,</p> <p>7 academies, the military, and other professional</p> <p>8 sports." Can you identify any top-ranked MMA</p> <p>9 athletes that were also in the elite ranks of other</p> <p>10 professional sports?</p> <p>11 A. I haven't looked at the elite ranks of</p> <p>12 other professional sports to see who moved over. I</p> <p>13 know that an elite wrestler tried to move over and</p> <p>14 got his butt kicked, but --</p> <p>15 Q. That's correct.</p> <p>16 A. Yep.</p> <p>17 Q. Can you identify any top-ranked MMA</p> <p>18 athlete that was in any rank of another</p> <p>19 professional sport?</p> <p>20 MR. WIDNELL: Objection, form.</p> <p>21 BY MR. CRAMER:</p> <p>22 Q. Not an elite necessarily. Just someone</p> <p>23 who played professional football, for example.</p> <p>24 MR. WIDNELL: Same objection.</p> <p>25 BY THE WITNESS:</p>
<p style="text-align: right;">473</p> <p>1 [REDACTED]</p> <p>2 [REDACTED]</p> <p>3 [REDACTED]</p> <p>4 [REDACTED]</p> <p>5 [REDACTED]</p> <p>6 [REDACTED]</p> <p>7 [REDACTED]</p> <p>8 [REDACTED]</p> <p>9 [REDACTED]</p> <p>10 [REDACTED]</p> <p>11 [REDACTED]</p> <p>12 [REDACTED]</p> <p>13 [REDACTED]</p> <p>14 [REDACTED]</p> <p>15 [REDACTED]</p> <p>16 [REDACTED]</p> <p>17 [REDACTED]</p> <p>18 [REDACTED]</p> <p>19 [REDACTED]</p> <p>20 [REDACTED]</p> <p>21 Q. The main reason that the fight had over</p> <p>22 1 million Pay-Per-View buys is Rousey, not Nunez,</p> <p>23 right?</p> <p>24 A. Sure.</p> <p>25 Q. All right. You can put that aside.</p>	<p style="text-align: right;">475</p> <p>1 A. Some of these guys -- some of these guys</p> <p>2 played other sports, if that's your question, but</p> <p>3 the facts of their background are that a lot of</p> <p>4 people came over from other sports and they fight</p> <p>5 in other sports.</p> <p>6 Q. Would you agree with me that if -- all</p> <p>7 things equal, if MMA fighter compensation generally</p> <p>8 rose relative to the compensation in other</p> <p>9 professional sports, more potential athletes that</p> <p>10 would otherwise have gone into these other sports</p> <p>11 would choose MMA instead?</p> <p>12 MR. WIDNELL: Objection, form.</p> <p>13 BY THE WITNESS:</p> <p>14 A. I think that's likely. That's part of the</p> <p>15 reason the sport itself has grown.</p> <p>16 Q. Would you agree that the better -- strike</p> <p>17 that.</p> <p>18 That therefore, all things equal, if you</p> <p>19 increase the compensation to MMA fighters generally</p> <p>20 you'd attract more qualified athletes?</p> <p>21 A. I think that's what's happened.</p> <p>22 Q. And, all things equal, increased fighter</p> <p>23 compensation --</p> <p>24 A. I don't know if the average would go up or</p> <p>25 not. Depends on whether you pull in more</p>

<p style="text-align: right;">476</p> <p>1 high-ranked -- high-quality people or low-ranked</p> <p>2 quality people, but the profession would become</p> <p>3 more attractive relative to other professions.</p> <p>4 Q. And, all things equal, if you therefore</p> <p>5 increase fighter compensation relative to other</p> <p>6 sports, that would improve the quality of MMA for</p> <p>7 consumers, right?</p> <p>8 MR. WIDNELL: Objection, form.</p> <p>9 BY THE WITNESS:</p> <p>10 A. There would be some effect there, yeah.</p> <p>11 [REDACTED]</p> <p>12 [REDACTED]</p> <p>13 [REDACTED]</p> <p>14 [REDACTED]</p> <p>15 [REDACTED]</p> <p>16 [REDACTED]</p> <p>17 [REDACTED]</p> <p>18 [REDACTED]</p> <p>19 [REDACTED]</p> <p>20 [REDACTED]</p> <p>21 [REDACTED]</p> <p>22 [REDACTED]</p> <p>23 [REDACTED]</p> <p>24 [REDACTED]</p> <p>25 [REDACTED]</p>	<p style="text-align: right;">478</p> <p>1 Q. Yeah. Can you identify any MMA promoter</p> <p>2 that was not in the FightMetric database that had</p> <p>3 or has a material share of the MMA promotion</p> <p>4 business?</p> <p>5 A. Well, if I don't have anybody in here,</p> <p>6 we've talked about the identities before, but I</p> <p>7 can't remember.</p> <p>8 Q. So sitting here today, you cannot identify</p> <p>9 a single MMA promoter with a material share of the</p> <p>10 MMA market that was not in the FightMetric</p> <p>11 database; is that right?</p> <p>12 MR. WIDNELL: Objection, form.</p> <p>13 BY THE WITNESS:</p> <p>14 A. I don't recall the names of the promoters</p> <p>15 that were not in there. I didn't keep track of</p> <p>16 that.</p> <p>17 [REDACTED]</p> <p>18 [REDACTED]</p> <p>19 [REDACTED]</p> <p>20 [REDACTED]</p> <p>21 [REDACTED]</p> <p>22 [REDACTED]</p> <p>23 Q. And Mr. Genauer who created it sells the</p> <p>24 data tracking MMA fighters and their records to MMA</p> <p>25 promoters; is that right?</p>
<p style="text-align: right;">477</p> <p>1 [REDACTED]</p> <p>2 [REDACTED]</p> <p>3 [REDACTED]</p> <p>4 [REDACTED]</p> <p>5 [REDACTED]</p> <p>6 [REDACTED]</p> <p>7 [REDACTED]</p> <p>8 [REDACTED]</p> <p>9 [REDACTED]</p> <p>10 [REDACTED]</p> <p>11 MR. CRAMER: For the court reporter there</p> <p>12 have been two words, FightMetric,</p> <p>13 F-I-G-H-T-M-E-T-R-I-C, and Fight Matrix, F-I-G-H-T,</p> <p>14 M-A-T-R-I-X.</p> <p>15 THE REPORTER: Thank you.</p> <p>16 MR. CRAMER: You're welcome.</p> <p>17 BY MR. CRAMER:</p> <p>18 Q. Can you identify a single MMA promoter</p> <p>19 that you believe was excluded from the FightMetric</p> <p>20 database that has or had a material share of the</p> <p>21 MMA promotion business?</p> <p>22 A. I'm sorry.</p> <p>23 MR. WIDNELL: Objection, form.</p> <p>24 BY THE WITNESS:</p> <p>25 A. I'm sorry. Could you say that again.</p>	<p style="text-align: right;">479</p> <p>1 A. That's my recollection.</p> <p>2 Q. Did you speak to Mr. Genauer --</p> <p>3 A. No.</p> <p>4 Q. -- in the course of your work?</p> <p>5 A. No.</p> <p>6 [REDACTED]</p> <p>7 [REDACTED]</p> <p>8 [REDACTED]</p> <p>9 [REDACTED]</p> <p>10 [REDACTED]</p> <p>11 [REDACTED]</p> <p>12 [REDACTED]</p> <p>13 [REDACTED]</p> <p>14 [REDACTED]</p> <p>15 [REDACTED]</p> <p>16 [REDACTED]</p> <p>17 [REDACTED]</p> <p>18 [REDACTED]</p> <p>19 [REDACTED]</p> <p>20 [REDACTED]</p> <p>21 [REDACTED]</p> <p>22 [REDACTED]</p> <p>23 [REDACTED]</p> <p>24 [REDACTED]</p> <p>25 [REDACTED]</p>

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<p style="text-align: right;">480</p> <p>[REDACTED]</p>	<p style="text-align: right;">482</p> <p>1 A. You just handed it to me.</p> <p>2 Q. Well, you rely upon it in at least three</p> <p>3 places in your report; isn't that right?</p> <p>4 A. I'm sure it came from attorneys for Zuffa.</p> <p>5 Q. You've seen it before, right?</p> <p>6 A. I've read a lot of documents. This looks</p> <p>7 familiar.</p> <p>8 Q. Turn to paragraph 6 on page 1 of the</p> <p>[REDACTED]</p>
<p style="text-align: right;">481</p> <p>[REDACTED]</p> <p>10 MR. CRAMER: I'd like to mark as the next</p> <p>11 exhibit the declaration of Abraham Genauer,</p> <p>12 Exhibit 18.</p> <p>13 (Topel Exhibit 18 was marked</p> <p>14 as requested.)</p> <p>15 BY THE WITNESS:</p> <p>16 A. Is this Rommey's --</p> <p>17 THE REPORTER: Hold on, please.</p> <p>18 BY THE WITNESS:</p> <p>19 A. I take it this is Rommey's formal name?</p> <p>20 Q. Well, this document was produced to the</p> <p>21 Plaintiffs by Zuffa. It's signed by Abraham</p> <p>22 Genauer. And it was executed October 26, 2017.</p> <p>23 A. Got it.</p> <p>24 Q. Do you know how this came into your</p> <p>25 possession?</p>	<p style="text-align: right;">483</p> <p>[REDACTED]</p> <p>22 Q. Do you know what fantasy sports gaming</p> <p>23 Websites do with regard to MMA?</p> <p>24 A. I suppose they probably have fantasy bouts</p> <p>25 and then people can participate.</p>

55 (Pages 480 to 483)

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<p style="text-align: right;">484</p> <p>1 Q. And it's fair to say that if -- 2 A. That's my recollection. 3 [REDACTED] 4 [REDACTED] 5 [REDACTED] 6 [REDACTED] 7 [REDACTED] 8 [REDACTED] 9 [REDACTED] 10 [REDACTED] 11 Q. All right. You can put that aside. 12 Is it your opinion that MMA fighters could 13 easily substitute from professional mixed martial 14 arts to boxing? 15 A. No. 16 Q. Is it your opinion that MMA fighters could 17 easily substitute from MMA fighting to football? 18 MR. WIDNELL: Objection, form. 19 BY THE WITNESS: 20 A. You mean to NFL football? 21 Q. Yes. 22 A. No. 23 Q. Is it your opinion that MMA fighters could 24 easily substitute from MMA fighting to playing 25 tennis, professional tennis?</p>	<p style="text-align: right;">486</p> <p>1 Have you done any analysis of how much it 2 would cost to train to switch from professional MMA 3 fighting to another sport? 4 MR. WIDNELL: Objection, form. 5 BY THE WITNESS: 6 A. I've done no financial analysis of such 7 switching. 8 Q. Did you do any analysis of how much time 9 it would take for a professional MMA fighter to 10 switch from professional MMA to another sport? 11 A. My understanding it takes various amounts 12 of time. 13 Q. Would you agree that it takes a tremendous 14 amount of skill and training to be a top-level MMA 15 professional fighter? 16 MR. WIDNELL: Objection, form. 17 BY THE WITNESS: 18 A. I think it takes a lot of skill to be a 19 top athlete in any category. 20 Q. Is it fair to say that in order to be -- 21 in order to be a top-level professional MMA fighter 22 one would need to be an extraordinary athlete; is 23 that fair? 24 MR. WIDNELL: Objection, form. 25 BY THE WITNESS:</p>
<p style="text-align: right;">485</p> <p>1 MR. WIDNELL: Objection, form. 2 BY THE WITNESS: 3 A. No. 4 Q. Other than Conor McGregor, can you 5 identify another MMA fighter who became a 6 successful professional boxer for more than one 7 fight? 8 MR. WIDNELL: Objection, form. 9 BY THE WITNESS: 10 A. No. Are you counting him as successful? 11 Q. You can determine that. Was he 12 successful, in your opinion? 13 A. He made money. He lasted longer than I 14 would have thought. 15 Q. Did you in your report do an analysis as 16 to whether there are other combat sports to which 17 professional MMA fighters could switch if their 18 compensation fell a small but significant agree? 19 MR. WIDNELL: Objection, form. 20 BY THE WITNESS: 21 A. Whether -- whether there are other sports? 22 Q. Yes. 23 A. Well, they surely could switch to some 24 degree. The magnitude, I didn't calculate it. 25 Q. Have you done an -- strike that.</p>	<p style="text-align: right;">487</p> <p>1 A. They are athletic. Whether they're as 2 athletic as some other field, I don't know. 3 Q. Is it fair to say that in order to be a 4 top-level MMA fighter that athlete would need to be 5 knowledgeable about several martial arts 6 disciplines? 7 MR. WIDNELL: Objection, form. 8 BY THE WITNESS: 9 A. I think they use several martial arts 10 disciplines. That's why it's called mixed martial 11 arts. 12 Q. And in order to be a top-level MMA fighter 13 the athlete would need to be knowledgeable and 14 trained in more than one martial arts discipline, 15 correct? 16 MR. WIDNELL: Same objection. 17 BY THE WITNESS: 18 A. I suppose one could be successful using a 19 limited set of skills, but you say more than one. 20 You're probably able to use more than one. That's 21 why it's called mixed martial arts. 22 Q. Right. If a boxer tried to become a mixed 23 martial artist and all that professional boxer knew 24 was boxing, he would get his butt kicked, wouldn't 25 he?</p>

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7 **Q. After Zuffa's acquisition of Pride it's**
8 **fair to say that Zuffa shut Pride down, correct?**
9 MR. WIDNELL: Objection, form.
10 BY MR. CRAMER:
11 **Q. It stopped running an MMA promotion under**
12 **the logo Pride, correct?**
13 MR. WIDNELL: Objection, form.
14 BY THE WITNESS:
15 A. Well, I don't know what it means to be --
16 shut down would be to remove their assets from the
17 market and by the same -- in the same way that when
18 my consulting business was sold they kept the name
19 for a little while and then they folded us in under
20 the other brand name, but our assets and human
21 capital were still in the market.

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Q. Are you aware -- so the UFC bought Pride in 2007; is that right?

A. I think that's the year, but I don't

<p style="text-align: right;">492</p> <p>1 remember.</p> <p>2 Q. So if the UFC -- are you aware about</p> <p>3 whether the UFC put on an event in Japan between</p> <p>4 2007 and 2012?</p> <p>5 A. I don't recall.</p> <p>6 Q. Would it surprise you to learn that after</p> <p>7 the acquisition of Pride in 2007, which you say was</p> <p>8 an effort to enter into the Asian MMA market, that</p> <p>9 Zuffa did not put on an MMA event in Asia until</p> <p>10 February of 2012?</p> <p>11 MR. WIDNELL: Objection to form.</p> <p>12 BY THE WITNESS:</p> <p>13 A. Doesn't surprise me because this</p> <p>14 investment didn't turn out so well, especially when</p> <p>15 the connection with management to the Yakuza became</p> <p>16 evident.</p> <p>17 Q. You mean that Zuffa did not know before it</p> <p>18 paid \$47 million to the owners of Pride that Pride</p> <p>19 had a relationship with organized crime in Japan?</p> <p>20 MR. WIDNELL: Objection, form.</p> <p>21 BY THE WITNESS:</p> <p>22 A. I don't know whether they had knowledge of</p> <p>23 it, but it didn't play out the way they had</p> <p>24 anticipated.</p> <p>25 Q. Well, wasn't it notorious that Pride's</p>	<p style="text-align: right;">494</p> <p>1 Asia. My understanding is they've tried to run</p> <p>2 things in Europe. How successful they've been I</p> <p>3 don't know.</p> <p>4 Q. Turn to paragraph 96, please.</p> <p>5 A. Yes.</p> <p>6 Q. In the last sentence on -- of paragraph 96</p> <p>7 on page 42 that begins "In this regard"; do you see</p> <p>8 that?</p> <p>9 A. Uh-huh.</p> <p>10 Q. You write "In this regard it is noteworthy</p> <p>11 that in Asia, which is one of the other geographic</p> <p>12 market for MMA identified by Dr. Singer, he cites</p> <p>13 one championship's claim that it has a 90 percent</p> <p>14 market share"; do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. Why is that noteworthy?</p> <p>17 A. Well, one has a 90 percent market share,</p> <p>18 it's not as if nobody can compete against --</p> <p>19 against Zuffa and Zuffa's actually tried to compete</p> <p>20 in that marketplace and hasn't been so</p> <p>21 successful.</p> <p>22 Q. The 90 percent figure is of the Asian MMA</p> <p>23 market; is that right?</p> <p>24 A. Yes.</p> <p>25 Q. All right. You can put that aside.</p>
<p style="text-align: right;">493</p> <p>1 owners had a relationship with organized crime in</p> <p>2 Japan?</p> <p>3 MR. WIDNELL: Objection, form.</p> <p>4 BY THE WITNESS:</p> <p>5 A. Well, I say here "Nothing would prevent</p> <p>6 him from using his local connections, including his</p> <p>7 alleged connections to Japanese organized crime."</p> <p>8 So somebody had some suspicions and how those</p> <p>9 played out I don't know, but I know that management</p> <p>10 had to be replaced.</p> <p>11 Q. Turn to paragraph 60, please.</p> <p>12 A. Yes.</p> <p>13 Q. The third sentence -- or the sentence</p> <p>14 beginning "One of Zuffa's key business</p> <p>15 initiatives"; do you see that? Starts about midway</p> <p>16 through the paragraph.</p> <p>17 A. Yes.</p> <p>18 Q. It says "One of Zuffa's key business</p> <p>19 initiatives was an expansion of its events to</p> <p>20 include international offerings and for developing</p> <p>21 new markets for MMA outside the United States"; do</p> <p>22 you see that?</p> <p>23 A. Yep, that was one of their initiatives.</p> <p>24 Q. What new markets?</p> <p>25 A. Well, they tried to run some stuff in</p>	<p style="text-align: right;">495</p> <p>1 MR. WIDNELL: When you say put that aside,</p> <p>2 you mean the report?</p> <p>3 MR. CRAMER: Oh, no. I still have more</p> <p>4 from the report.</p> <p>5 THE WITNESS: Darn. I was putting it</p> <p>6 aside.</p> <p>7 MR. CRAMER: Yeah. Yeah.</p> <p>8 MR. WIDNELL: That was cruel.</p> <p>9 BY MR. CRAMER:</p> <p>10 Q. Well, before I go back to the report --</p> <p>11 turn to paragraph 201. In the first two sentences</p> <p>12 you say "In his regression assessing common impact</p> <p>13 Dr. Singer only considers the impact of the</p> <p>14 contractual restrictions in PAR contracts that he</p> <p>15 claims extend the period of exclusivity when an</p> <p>16 athlete is under contract to Zuffa. Similarly,</p> <p>17 when computing damages using his foreclosure</p> <p>18 regression benchmark, Dr. Singer only estimates the</p> <p>19 harm due to the alleged foreclosure provisions."</p> <p>20 What do you mean by that?</p> <p>21 A. I mean you have a list of challenged</p> <p>22 conduct and not all of it goes into the calculation</p> <p>23 of his -- his foreclosure shares. You know, you</p> <p>24 have to put all of the alleged conduct in front of</p> <p>25 me because it's late in the day.</p>

<p style="text-align: right;">496</p> <p>1 Q. Well, you list some of them in the next 2 sentence. 3 A. Yeah. 4 Q. There's the horizontal acquisitions, the 5 counter programming; do you see that? 6 A. Yeah. 7 Q. And what you're saying is that the -- at 8 best the foreclosure analysis only considers the 9 impact from the challenged -- contractual 10 restrictions in the par contracts; is that right? 11 A. Yeah. 12 Q. All right. You can put that aside for a 13 minute. 14 Who's Joe Silva? 15 A. Isn't Joe Silva the -- 16 Q. Well, I'll refresh your recollection. 17 Turn to paragraph 61. 18 A. Yeah. There are actually two people in 19 this case with the last name of Silva. 20 Q. That's true. There's a fighter. Turn to 21 paragraph -- 22 A. What page? 23 Q. Paragraph 61, footnote 9 -- 94. 24 A. Paragraph 61, footnote 94. 25 Q. Right. In footnote 94 you cite the</p>	<p style="text-align: right;">498</p> <p>1 Zuffa. 2 THE REPORTER: One at a time, please. 3 BY MR. CRAMER: 4 Q. Let me ask the question again. Thank you. 5 Are you aware that Mr. Silva, Joe Silva worked for 6 the UFC prior to Zuffa's acquisition of the UFC? 7 A. I think I agreed to that. 8 Q. Okay. All right. And in paragraph 61 you 9 are citing Joe Silva as an authority about the 10 types of athletes necessary to run a successful MMA 11 promotion; is that fair? 12 MR. WIDNELL: Objection, form. 13 BY THE WITNESS: 14 A. It's more about a process of identifying 15 those athletes. 16 Q. And you believe he's a knowledgeable 17 resource on that topic? 18 A. He's a participant. 19 Q. And do you believe he's a reliable source 20 regarding the quality of MMA talent? 21 A. He's reliable for -- 22 MR. WIDNELL: Objection, form. 23 BY THE WITNESS: 24 A. -- for the purposes that I used here. 25 Q. And one of the purposes for which you used</p>
<p style="text-align: right;">497</p> <p>1 deposition of Joe Silva, right? 2 A. Yes. 3 Q. Does it refresh your recollection that he 4 was the matchmaker for Zuffa? 5 A. Yes, it does. 6 Q. Does it sound right that he worked for 7 Zuffa from about 2001 to 2016? 8 A. That's familiar, but if you asked me to 9 verify that those are the dates, don't do that. 10 Q. Okay. Are you aware that he also 11 negotiated fighter contracts with some of the 12 fighters? 13 A. Yes. 14 Q. Are you aware that he worked for Zuffa 15 prior to the -- worked for the UFC prior to the 16 UFC's acquisition of Zuffa? 17 A. So he was carried over as an element of 18 management. 19 Q. Yes. 20 A. Yes. 21 MR. WIDNELL: I'm sorry. You mean prior 22 to Zuffa's acquisition of UFC? 23 MR. CRAMER: Yes. 24 THE WITNESS: Isn't that what he said? 25 MR. WIDNELL: He said UFC acquisition of</p>	<p style="text-align: right;">499</p> <p>1 him here was what it takes to successfully run an 2 MMA promotion; is that right? 3 A. Yes. 4 Q. Turn to paragraph 76, please. In footnote 5 129 you'll see that you -- here again is the 6 deposition of Joe Silva, you cite him again; is 7 that right? 8 A. Yes. 9 Q. And you cite him here when discussing 10 Zuffa's competition for what you call, 11 quote/unquote, named fighters; is that right? 12 MR. WIDNELL: I'm sorry. What are you 13 referring to? 14 BY MR. CRAMER: 15 Q. The last sentence of paragraph 76 says 16 "Since Zuffa's inception it has been outbid for 17 what Joe Silva called 'named fighters' by other MMA 18 promotions"; do you see that? 19 A. Yes. Excuse me. 20 Q. And you cite Mr. Silva's deposition for 21 that proposition; is that right? 22 A. Yes. 23 Q. Would you agree that Mr. Silva's a 24 reliable source regarding MMA fighter talent 25 acquisition?</p>